

LEGAL TECHNICALITIES IN CONDITIONS OF POLITICAL CONFLICT: THE
CASE OF LAND TENURE DISPUTES IN COLOMBIA

A Dissertation

Presented to the Faculty of the Graduate School

of Cornell University

In Partial Fulfillment of the Requirements for the Degree of

Doctor of the Science of Law

by

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August 2012

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LEGAL TECHNICALITIES IN CONDITIONS OF POLITICAL CONFLICT: THE CASE OF LAND TENURE DISPUTES IN COLOMBIA

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Cornell University 2012

While most legal analysis pertaining to land ownership by rural communities focuses on socio-political disputes between rural communities and elites who use the legal system to consolidate their power, this dissertation suggests that a closer look at the technicalities found in law reveals a more complex and interesting dynamic between actors and the use, circulation and understanding of law. Traditionally, the view in socio-legal studies conceives legal technicalities as distant from ordinary people's experiences of their lives and rights. The findings in this ethnographic study, however, demonstrate that these technical aspects of law are key in framing and mobilizing the dispute over land ownership.

It is through working with these legal technicalities, the mundane tasks of filling out required forms, issuing signatures, or verifying internal procedures and technical standards for the distribution of social benefits, that bureaucrats direct their work, interpret what they are doing, and obtain new knowledge about law and institutional proceedings. Furthermore, as this research shows, not only bureaucrats are concerned with legal technicalities, *campesinos* also emulate technical legal documents and arguments in their dealings with the State and with one another.

Overall this dissertation by focusing on legal technicalities pushes towards a revision

of the preconceived gap between law on the books and law in action that has characterized the debate in both, socio-legal scholarship and socio-economic analysis pertaining to land ownership in Colombia.

BIOGRAPHICAL SKETCH

Sergio Latorre was born in Bogota, Colombia. He holds a LL.B. from the Pontificia Universidad Javeriana and a LL.M. from Cornell University. In 2002, he served with the Jesuit Refugee Service, working with internally displaced communities in different regions in Colombia. Upon finishing his law degree, Sergio moved to the U.S. and worked as a research assistant at the Eagleton Institute of Politics at Rutgers University. He has also worked as an intern at the Americas Division of Human Rights Watch in New York and at the Center for Justice and International Law in Washington D.C. From 2007 to 2012 he has been a J.S.D candidate at Cornell University.

Para mi mamá, Diego y María

ACKNOWLEDGMENTS

This project would not have been possible without the support and collaboration of many people. First and foremost I want to thank all the informants that took part of this project. I wish I could mention all of them here but matters of space and, in some cases, confidentiality do not allow me to do so. The informants not only generously gave of their time but bore my questions and many flaws, as they took me through their daily activities, sometimes not entirely understanding why I was there. Many of them openly gave me access to their lives and welcomed me into their homes. I have been blessed with their trust, and have internalized experiences and life lessons that go well beyond the scope of this project. I hope the accounts presented in this document exhibit the level of respect that is due, remain faithful to their trust, and can contribute with new insights towards answering some of their concerns.

I am also deeply grateful to Cornell University for its training and financial support. In particular, I am grateful to the Cornell Law School, the Graduate Legal Studies Program, the donors of the Rudolph B. Schlesinger Fellowship for several years of support during my masters and doctoral studies and to the Peace Studies Program for providing me with their graduate fellowship to undertake my year and a half fieldwork in Colombia.

I am thankful to the institutions and persons that at different stages provided me with their affiliation and resources during my fieldwork in Colombia. The Instituto de Desarrollo Rural (Incoder) allowed me to visit their offices for several months, gave me access to their documentation, allowed me to observe and interview staff and as well allowed me to participate in some of the processes for land adjudication. I want to

give special thanks to Juan Carlos Zambrano, who facilitated my access to the institute, Diana Ocampo the institute's legal office manager and Angelica Acuña, the land project coordinator. I am also in great debt to the Centro de Investigación y Educación Popular –Cinep-, which allowed access to their documentation center, provided a physical space to work and enabled me to interact with the center's group of researchers on political violence in Colombia. I want to thank Mauricio Garcia, his director, Luis Guillermo Guerrero and all the people at the center whom I had the honor to meet and exchange ideas with. Their legal team - Natalia Paredes, Sergio Coronado and Javier Medina - was particularly supportive of my research, always willing to share new information and provide feedback on my observations and findings on land regulation in Colombia.

My special gratitude to the members of the Corporación Desarrollo Solidario (“CDS”) in Cartagena, who introduced me to the region of Montes de Maria. Their institutional openness and flexibility allowed me to interact with the local *campesino* leaders of the region, the parish of Maria la Baja and other humanitarian institutions which intervene in that region. I will always remember and admire the tremendous work of its founder, Pedro Nel Luna, whom I was fortunate enough to interview before he passed away. To all the CDS members, I express much gratitude and admiration, but I want to acknowledge in particular Dianys Peraza, Gabriel Urbano, Auris Moreno, Roberto Canoles and Yina Marmol who helped me run some of the “land workshops” with the community in Santa fe de Icoitea and who supported me in all of my initiatives throughout my fieldwork.

In the town of Maria la Baja I want to thank fathers Pepe and Salvador, whose commitment to social justice I deeply admire. I want to express my gratitude, love and

admiration for Dominga Ospino, community leader, friend, and adoptive mother during my time in María la Baja. I am grateful to her family and all my friends in María la Baja for their friendship.

Last but not least, my thank you to all the women and men of Asosantafe, Asosena, Asosuprema and the associations I had to opportunity to meet or work with. Their names, images, memories, and lessons will always be with me.

In Socorro I want to thank Ricardo Dávila and Edelmira Perez from the Instituto de Estudios Rurales at the Universidad Javeriana, professor Miguel Fajardo from de Universidad de San Gil and Polidoro Guitero, *campesino* leader and board member of the Casa *Campesina* in el Socorro; many thanks for providing me with the contacts and information to access the Socorro region. My special thanks to members of the Casa *Campesina* of el Socorro Santander and the local radio station “La Cupula” for their hospitality and generosity, for letting me stay at the house during my fieldwork in that region. To all the members of the Sindicato de Agricultores of el Socorro and the inhabitants of the rural district of el Libano who opened their homes to me, my deepest gratitude.

Every visit and meeting was full of memories and anecdotes, but in one of those “routine” visits to el Libano, I met 92-year old Maria Carreño sitting outside her half-erected house, with a dog at her side and wearing the typical *campesino* hat of the region. This woman, physically impaired and at that time mourning the recent death of her only son, shared with me words which have served as the greatest lesson someone ever taught me about life. This dissertation is dedicated to your memory María, and through you to all the *campesinas* and *campesinos* uncounted for in this

and other texts.

This dissertation benefited from lively discussions held at different conferences and events. Particularly useful for the incubation of its ideas were the summer program at the School of Criticism and Theory at Cornell University, the Conference on New Perspectives on Law and Development held at Los Andes University, the Latin American Studies Association Annual Meeting in Rio de Janeiro, the Law and Society Annual Meeting in Chicago, the Institute for Global Law and Policy Workshop in Boston, the Anthropological Association Annual Meeting in New Orleans and the Advanced Seminar in Law and Anthropology at Cornell University. I want to express my gratitude to those who shared concerns about the project, made critiques of the ideas presented or provided encouragement to continue this research.

At different stages, several colleagues and friends read drafts, help proofread the text and corrected the many mistakes that come from my literal translation from Spanish into English. I am particularly in debt to Jessica Litman, Abby Flottemesch, Marco Palau, Karina Palau, Sahand Boorboor, Chris Gaby, Toby Goldbach, Emma O’Riordan, Michelle Burgis-Kasthala, Tim McLellan, Mariana Saavedra and Josefina Iannello for their help. Very important in these years has been the support and company of old and new friends, who have helped me with words of encouragement and provided the relentless support and care needed to finish this dissertation. Those at home, Daniel Cardona, Alexandra Quintero, Diana Fuentes, Andrés Gutierrez, Andrea Toro, Luis Fernando Múnera, Eva María Rodríguez and Yulieth Hillón and those whom I have met during my time at Cornell, Susana Romero, Esteban Hoyos, Camilo Castillo, Ethel Castellanos, Leticia Barrera, Juliana Rangel, Sergio Muro, Buhm Suk Beck, Luwam Dirar, Veronica Corcodel, Adedokun Ogunfolu and Rodney

de Souza.

Finally, I do not have the words to express the extent of my gratitude for the support and commitment that my committee has shown for this project. To Eduardo, I am grateful for his guidance and suggestions. The core argument of this project was found reviewing the property literature he suggested in the early stages of my research. To Mitch, I am thankful for his keen reading and suggestive insights, and his overall belief in this project and in me. His energy pushed this project forward. Completing this dissertation would not have been possible without his mentorship and support. To Annelise, I am grateful for the gift of Anthropology and above all for teaching me to see the world around me in a different way. As a chair one cannot ask for anything else. I am indebted to her for her commitment and support along the way, for the intellectual freedom she permitted and for the example, guidance and discipline she continues to instill in me.

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CHAPTER 1

INTRODUCTION: LEGAL TECHNICALITIES, ITS SPACE IN LAND DISPUTES

Introduction

In 2002 ex-governor of the State of Antioquia, Alvaro Uribe Velez, won the Colombian presidential elections with a sweeping majority. Uribe, who until few months before elections had run at the back lines of the presidential polls, had risen quickly to win the elections in the first round. This event happened a few months after peace negotiations with the left wing guerrillas Farc had failed. The outgoing government of president Andrés Pastrana had decided to break off three years of tortuous peace talks with Farc and to take back military control of the demilitarized zone that had been in place during peace negotiations.

The government's decision had come after a series of attacks perpetrated by Farc in various regions of the country in which a cease of fire had not been declared. The last episode that triggered the government's decision to stop negotiations had been the hijacking of an aircraft and kidnapping of a senator who was politically close to the government. Most Colombians had seen Farc use the demilitarized territory to grow more powerful instead of negotiating peace, and saw these guerrilla actions as a mockery. Guerrilla actions during these years had become a real threat to the government. Colombians witnessed military forces being hit hard during the Pastrana administration. The guerrillas had successfully managed to take towns and soldiers prisoner. One guerrilla action in 1998 consisted of a three day offensive on Mitú, the

capital of the State of Vaupés in the southeast part of the country, and saw Farc take more than sixty soldiers prisoner.

After the break in peace negotiations in February of 2002, one man captivated the public sentiment. As governor Uribe had shown a hard-line stance against the guerrillas. Some of his actions as governor, such as the creation of legal self-defense groups in the state of Antioquia to fight against guerrilla threats, had raised concerns amongst groups of journalist, intellectuals and politicians. However, public sentiment favored him as people saw Uribe as the right person to respond to Farc's threats. In August of 2002, right after taking office, Uribe called for a state of emergency across the country and declared an open war against guerrilla rebels.

A year later Uribe began peace negotiations with The United Self-Defense Forces of Colombia (AUC), the organization that served as the umbrella to most of the paramilitary groups. The AUC had been fighting against the guerrillas' for more than a decade. The group had become an organized illegal army with the support of large landowners and, through its link with drug cartels, had managed to take vast regions of the country out of guerrilla control. By threatening rural population, perpetrating massacres and selectively killing or disappearing of leaders, the AUC's direct confrontation with guerrillas caused the displacement of millions of rural *campesinos*. Paramilitaries had also managed to infiltrate local political elections and in some towns they ran the local state administrations from behind the scenes.

The process of AUC's demobilization lasted three years. The AUC claimed that more than 30,000 combatants demobilized during the process. However, human rights groups have challenged this number and have criticized the government for been too

lenient with the paramilitaries. Most of them received an amnesty despite committing abuses, including massacres, forced displacements and disappearances. This is despite the efforts of the Constitutional Court to reform some of the articles of the demobilization law, known as the Ley de Justicia y Paz.

Links between high-ranking government politicians and right-wing-paramilitary leaders were confirmed right after Uribe won his second term in office during 2006. Politicians who had shown unconditional support to Uribe's government and who had passed a constitutional amendment to have him re-elected as president for a second term, had secured their elections thanks to paramilitary support. Several senators and representatives were found guilty of illicit links with paramilitaries by the Supreme Court and are now behind bars. This includes Uribe's first cousin who was elected senator for the state of Antioquia.

Other scandals occurred during Uribe's second term. The government was charged with political espionage against journalists, judges, opposition political leaders, and intellectuals. In another scandal, the military authorities were accused of falsifying records of the number of guerrilla casualties by killing poor civilian and dressing them in military clothes. This was done in order to collect the military bonuses given for the killing of enemy troops. In addition, two of Uribe's ministers have been accused of bribing members of Congress to secure Uribe's re-election.

Despite these scandals, Uribe still enjoyed a high popularity in Colombia. His personal appeal as a disciplined, workaholic, clever and charismatic man was also buttressed by the military success his government had in breaking guerrilla strongholds never before breached by a Colombian government. Among its most famous military victories was

Operation “Check Mate”, where the Colombian army rescued the country's highest-profile hostage, Ingrid Betancourt, together with other 14 hostages in the southern-central region of Guaviare. In addition, two of the most important guerrilla leaders were killed and several rebel commanders are now imprisoned. During his administration government military forces managed to reverse the dynamic of guerrilla warfare and inflicted several spectacular military defeats upon the guerrillas.

The echo of victories and scandals during Uribe’s administration exacerbated the political environment in Colombia during his years in power. The polarized environment also saw an escalating violence in the language and arguments used in the political arena. Those who criticized Uribe and his government were often referred to as “terrorist helpers”, or “guerrilla ideologist”. This referenced the connections that some leaders and political figures had had in the eighties with left wing movements sympathetic to the ideas of the urban and indigenous guerrillas that demobilized after Colombia's Constitution was passed in 1991. On the other hand, those who defended Uribe’s ideas of a strong authority and the provision of security and stability to attract foreign capital, were often labeled fascists, oligarchs or simply paramilitaries.

Uribe’s popularity allowed senators in congress to pass a new referendum law that would ask citizens to decide on whether Uribe could run for president a third time. However, the Constitutional Court struck down the law blocking his potential candidacy for a third term and creating a gap in political leadership that some of his most prominent ministers quickly tried to fill. They ran their political campaigns portraying themselves as continuing Uribe’s formula. Among them was ex-Minister of Agriculture Andres Felipe Arias, and ex-Minister of the Interior Juan Manuel Santos, who eventually became president.

The instrumental role of Law: Traveling across the political spectrum

In November 2009, the political opposition put forward a motion to impeach the minister of Agriculture¹ for his role in leading the government's main projects of rural development in Colombia. The scandal arose when *Cambio*, a leading political magazine, revealed that the Agro Ingreso Seguro program (which roughly translates into Assured Rural Income program and will be hereafter referred to as AIS), which had created by the government and had until then been exhibited as an example of efficient management of the rural sector, had, in fact, benefited some of the wealthiest families of the country involved in the control of land and agriculture.²

The program, created by Law 1133 of 2001, was passed in Congress with the idea of providing subsidies to farmers and *campesinos* in order to boost rural production in segments of the economy that might suffer once the Free Trade Agreement with the United States was finally approved by both governments. As part of the program, small, middle and large landowners who fulfilled the requirements required by law could apply for different aid packages of subsidies to increase their production and thus become more competitive in the rural sector.³

Debates for the motion of impeachment took place in an environment of heated

¹ Even though the motion was put forward against the Minister, the real responsible for the program was the ex-minister of Agriculture, Andrés Felipe Arias, who at that time was a strong political candidate for the presidential election in the country.

² "Programa Agro Ingreso Seguro ha beneficiado a hijos de políticos y reinas de belleza", *Revista Cambio*, October, 2009, accessed June 15, 2012, http://www.cambio.com.co/paiscambio/847/ARTICULO-WEB-NOTA_INTERIOR_CAMBIO-6185730.html.

³ The program of land subsidies for poor *campesinos* studied in detail in chapter 2 copied parts of the structure of the AIS program.

animosity between contenders in the Colombian congress. The opposition claimed that the government was responsible for purposely designing the system of subsidies to favor influential families in the country in order to receive in return economic and political support for the next election campaign. The opposition maintained that the government had not only used resources from tax-payers to buy the next election campaign but had also given money to the wealthiest in the country while more than 3 million *campesinos* had been displaced from their land.

In its defense, the Ministry argued that the program had greatly benefited small owners, by establishing a system of subsidies that was lacking in rural areas in order to prepare the rural sector to compete after the free trade agreement with the US was ratified, as others countries in the regions had done (Mexico and Chile). The Minister maintained that the arguments of the opposition were malicious and that the whole program should not be maligned because a few people were able to trick the system and obtain resources from the state for private agribusiness investments. According to him, mistakes and breaches in the system were not the responsibility of the government but were rather errors in the mechanisms of control established by the international agency that evaluated the technical aspects of each project. The government had no role in it.⁴

Public opinion followed these debates closely over the course of the month. Enthusiasts gathered around parliament, where they held banners in support of the government or the opposition, each side chanting in favor of their leaders and booing their opponents after each politician concluded their speech. Newspaper articles,

⁴ Motion of Impeachment. Broadcasted by Public National Television. *Señal Colombia*. October 28 2009 and November 10 of 2009.

political columnists, radio shows, street surveys, and satirical political shows helped to keep the debate alive since then.⁵

The debate not only tried to establish the responsibility of high functionaries in designing a system to provide subsidies that purposely privileged certain families and agro-industrial businesses over poor *campesino* owners who tried to access the subsidy. It was able to bring attention to one of most controversial topics in the country, and the one that awoke the most hostility: the problem of access to land. This issue touches one the most sensitive fibers of the country's collective imagination about its own problems.⁶

The debate also helped recreate two very different visions of how to deal with the problem of land in the country. This split can be characterized as the divide between a market base and a regulatory state approach to dealing with the problem of land in the rural sector. Certainly in the Colombian political spectrum there are at least two identifiable positions in contention with regard to the issue of land. Obviously these positions tend to become blurred and full of subtle differences once in contact with individual people, either government staff at different offices, NGO workers or experts on the subject.

⁵ The motion failed, but the program was submitted to serious restructure and eventually was struck down and replaced by one that maintains some similar features but that only targets low and middle-income farmers called Desarrollo Rural con Equidad. The scandal eventually cost the ex-ministry of Agriculture Andres Felipe Arias his party nomination for the presidential election. At the moment there are ongoing judicial investigation trying to establish some of the responsibilities of 6 staff officials and 2 high functionaries including the ex-ministry, who is now in protective custody waiting for trial.

⁶ Disputes over land tenure are a crucial element in the armed conflict in Colombia. Such disputes were the initial cause for the formation of armed groups in the 1940s and 1950s and then a decade later resulted in the birth of the two most powerful left-wing guerrilla movements of today: the Revolutionary Armed Forces of Colombia (FARC) (1964) and the National Liberation Army (ELN) (1965).

However, for the purpose of clarity we can say that these two contending positions were and still are at the heart of the debate about land and were clearly portrayed in these debates in congress during the month of November of 2009. The motion of impeachment highlighted this divide in the approaches taken by the government and the political opposition. Both groups engaged in particular uses of legal tools, implemented different legal and political strategies, produced particular kinds of argumentation and circulated particular kinds of information through public and institutional channels.

In the debate, the market base approach was best represented by the ex-minister of agriculture, Andrés Felipe Arias, and a number of his government officials. For them, the idea of providing access to land for landless *campesinos* was an “archaic socialist romantic” idea that had failed the country in the past.⁷ Therefore the questions surrounding land had not so much to do with land distribution but with how to generate a competitive and efficient rural sector by creating incentives for capital investment that would boost production and generate employment for rural workers.

To this end, his administration pushed forward particular legal initiatives including the program, under scrutiny, and also a legal reform that cut Incoder’s responsibilities and merged it with five other institutions in the rural sector (Decree 1300 of 2003) in order to make the institution more efficient, flexible and less bureaucratic. Finally his administration sought to strike down Law 160 of 1994 of rural reform and replace it with a new law of rural development known as Law 1152 of 2007.⁸

⁷ Maria Isabel Rueda, “¿Usted se va a dejar tumbar?”, *Revista Semana*, March 1 2008, accessed June 15 of 2012, <http://www.semana.com/nacion/usted-va-dejar-tumbar/109786-3.aspx>

⁸ Law 1152 wording was extremely telling of the way the government tried to deal with the situation of poor rural communities in the country. Law 1152 was thought to give a new structure to the system of rural reform and overturned any previous regulation on the matter of land distribution. For the first time

On the other side of the spectrum, representing the regulatory state approach in this debate, was senator Jorge Enrique Robledo, the government's fiercest opponent who is a left wing academic and latecomer to politics. Supporting him were not only the political opposition in Congress but also a number of NGOs, local and grass roots organizations and a number of academic experts. According to Robledo, the government had "a moral debt" with *campesinos* that had been constantly overlooked in government policies directed towards the rural sector. This situation had led Colombia to have the highest levels of concentration of the land ownership in the region.⁹ Therefore, the country needed a serious restructuring of the policies towards the agrarian sector, in which the issue of land distribution to poor *campesinos* had to be a pivotal part of this new policy. Robledo and his party had not only opposed the drafting of Law 1131 of 2002 and Law 1152 of 2007 among other governmental initiatives, but were involved in the lawsuit that struck down law 1152 of 2007.¹⁰

These two instantiations of the divide between market and state regulation, somewhat loosely sketched but so vividly embodied in November's parliamentary debate, help introduce the purpose of this project. With some exceptions¹¹ law has been used as an instrument or a tool in the dispute between the two approaches over access and control of land. Too often the political and socio economic motivations of the different actors

since 1936 this law did not mention rural reform, but instead it talked about "desarrollo humano sostenible y el bienestar del sector" (sustainable human development and welfare of the sector) leaving the question of providing access to property and land ownership to poor rural communities unanswered.

⁹ Ana Maria Ibanez, *La concentración de la propiedad rural en Colombia: Evolución 2000 a 2009, desplazamiento forzoso e impactos sobre desarrollo económico* (Bogotá: Universidad de los Andes, 2009)

¹⁰ Colombian Constitutional Court (Decision C-175, March of 2009).

¹¹ See: Alviar, Helena. *Redistributing Land in Latin America: Caught between Economic Development and Positivism*. Seminar in Latin America on Constitutional and Political Theory (SELA): Yale Law School, 2008; and Salgado, Carlos, *Los campesinos imaginados* (Bogotá: Instituto Latinoamericano de Servicios Legales Alternativos, ILSA, 2002.)

involved has led to the design of new laws and regulations that have moved back and forth along the spectrum, between the market approach and a more active role of the state to intervene and regulate these relationship in the rural areas.

The legal history of Rural Reform in Colombia has usually been read along these lines. On the one hand, legal instruments move towards a more state-base regulatory approach such as, Law 200 of 1936, Law 135 of 1961, or the recently approved law of land restitution and victims, Law 1448 of 2011. On the other hand, legal instruments move towards the opposite side of the spectrum to a market approach where the economic interest of private actors is privileged and protected, such as in Law 100 of 1944, Law 4 of 1973, Law 160 of 1994 or the recently struck law 1152 of 2007.¹²

This is a somewhat flat view of the role of law in land disputes. What this view leaves out are the effects that law has upon peoples understanding of conflict over land. By instrumentalizing the role of law as a tool that responds to broader social, political or economic forces in contention we overlook some of the more complex and interesting effects this tool produces in understanding land disputes. Moreover, what is seen as a highly disputed set of socio-economic debates mobilizing a wide variety political strategies, in practice gets unloaded into a set of standard and routine practices at the level of making and using law in everyday situations. Therefore, the main purpose of this project is to provide with an account of how to understand the role law plays in the current legal disputes over land in Colombia by following these every day interactions between *campesinos* and officials.

¹² For descriptions of Colombian Agrarian Law see for example: Héctor Castañeda Beltrán, *Lecciones de derecho Agrario* (Bogotá: Ed. Doctrina y ley, 1996); José Maria Martínez de Aparicio, *Temas de Derecho Agrario. Baldíos Nacionales* (Bogotá: Ed. Gustavo Ibáñez, 1998); Julio Cesar Quintero Latorre, *Qué Pasó Con La Tierra Prometida?: Aspectos Históricos De Tenencia De La Tierra : Análisis Comparativo De Proyectos Y Leyes De Reforma Agraria En Colombia* (Bogotá: CINEP, 1988)

I will move now to review how the role of law has traditionally been understood by socio-legal scholarship and to locate the particular approach towards legal technical devices or legal technicalities that I use in this project within the field of law and society. I will present this approach as an alternative method for overcoming some of the debates that have come to characterize the field. Second, I will present the theoretical and methodological influence of Science Technology Studies in advancing the analysis of legal technical devices in law. Subsequently, I will flesh out the theoretical concept of legal technicalities, some of its characteristics, as well as to explain how this concept is used in the context of understanding the role of law into the problem of landownership disputes in Colombia. Finally, I will conclude explaining the structure and organization of the project.

The space of Legal Technicalities in Law and Society

Law and Society scholarship has seen the scope of its project as primarily interested in what the law does on the ground, and generally less concerned with what the law *is* (the legal rules and procedures from inside the legal system.)¹³ The way socio-legal scholars have empirically explored the processes and consequences of implementing and administering the law has drawn extensively from other disciplines and has been prolific in the production of a rich set of questions and insights.

One of Law and Society's main contributions to the study of law has been to develop two different modes of analysis that explain the relationship of law and society. On the

¹³ See: Stewart Macaulay et al., *Law & Society: Readings on the Social Study of Law* (New York: W.W. Norton & Co, 1995).

one hand, law is seen as an instrument by which society can be deterred, controlled or influenced.¹⁴ On the other hand, law cannot be conceived merely as an instrument but must also be taken as a set of conceptual categories that help construct, compose, communicate, and interpret social actions in everyday life.¹⁵

These two modes of inquiry have led to a stimulating array of socio legal work. Those for whom law constitutes a tool that reflects, reproduces, modifies other features and institutions of social life, and also those that by critiquing the conception of society as one ontological domain separated from law,¹⁶ see in law a constitutive element in society and have directed their attention to theorizing law's relationships to power, ideology, and its inherent hegemonic power.

For both of these influential trends of socio legal thought, which can be broadly conceptualized as culturalist and materialist,¹⁷ the question about how technical legal knowledge itself is created, used, circulated, or exchange has remained under theorized. As Annelise Riles has argued, for the culturalist account “the technical dimensions of law are mundane and inherently uninteresting dimension of law, the

¹⁴ See for example: William J Chambliss, “Types of deviance and the effectiveness of legal sanctions” *Wisconsin Law Review* (1967): 703-719; John Gaventa, *Power and powerlessness: quiescence and rebellion in an Appalachian valley* (Urbana: University of Illinois Press, 1980), 1-32; Franklin Zimring and Gordon Hawkins, “The Legal Threat as an Instrument of Social Change” *Journal of Social Issues* 27 (1971): 33-48.

¹⁵ See for example: Austin Sarat, and Thomas R Kearns, *Law in Everyday Life* (Ann Arbor: University of Michigan Press, 1993); Patricia Ewick and Susan Silbey, “Common Knowledge and Ideological Critique: The Significance of Knowing That the “Haves” Come Out Ahead” *Law & Society Review* 33 (1999): 1025-1041.

¹⁶ These authors critique the conception of society as one separate ontological domain separated from law. Susan Silbey explains, “For most of the twentieth century, legal scholars had treated law and society as if they were two empirically distinct spheres, as if the two were conceptually as well as materially separate and singular. They are not. The law is a construct of human ingenuity; laws are material phenomena. Similarly, society is a fiction we sustain through hard work and mutual communication”. Susan S. Silbey, “After Legal Consciousness” *Annual Review of Law and Social Science* 1 (2005): 323-368, 327.

¹⁷ Annelise Riles, “A New Agenda for the Cultural Study of Law: Taking on the Technicalities” *Buffalo Law Review* 53 (2005): 973-1034, 974.

realm of practice rather than theory”. For the instrumentalist, “the technical details of doctrine are interesting only insofar as they are relevant to what lawyers sometimes term ‘building of a better mouse trap’”.¹⁸ The legal technical knowledge has not become the subject of a deeper analysis in either of these socio legal trends.

Susan Silbey arrives at a similar conclusion in her article, *After Legal Consciousness*, published in 2005 in the *Annual Review and Law and the Social Science* in 2005

“On the one hand, this gap is not simply the creation of the powerful, because indeterminacy is inherent to the application of formal laws. On the other hand, the gap is infinitely useful to the powerful, because its persistence provides an alibi for the particular form that the gap takes. Similarly, legal consciousness is not inherently hegemonic (indeed, it is the ground for the type of immanent critique favored by critical theorists); however, it is infinitely useful to hegemony. If hegemony is sustained, as I argue, by a dialectic embracing ahistorical, general accounts of law’s transcendent majesty alongside pragmatic instrumental engagement with its techniques, we need to understand better the ideological struggles involved in constructing these accounts, how they provide the grounds simultaneously for valorization and critique.”¹⁹ (underline added).

Silbey invites us to revitalize our theoretical approaches regarding what constitutes a core tenet in law and society scholarship, that is, that the social and institutional practices surrounding the law are just as important as the substance of the law on the books.²⁰ She asks the question of how can we re conceptualize this “persistent,

¹⁸ Ibid.

¹⁹ Silbey, “After Legal Consciousness,” 360-361.

²⁰ Roscoe Pound “Law in books and law in action” *American Law Review* 44 (1910).

troublesome gap between the law on the books and the law in action” that is at the hearth of legal knowledge.

Corresponding to Riles’ approach, Silbey considers tracing legal knowledge on “the ground of institutional practices” to be the most promising line of inquiry. She claims it is important “to describe the mechanisms by which legal schema are propagated, circulated, and received”. To her, it is in these places and following these mechanisms by which, “institutions cultural meaning, social inequality, and legal consciousness are forged”.²¹

It is this particular line of inquiry what I aim to follow in this project. The project builds on these insights by focusing on the technical devices (or legal technicalities) of property law for rural areas in Colombia. I contend that focusing on these technicalities found as inherently uninteresting and mundane for most socio legal scholars, might be just the ticket to a renewed explanation of the persistent gap experienced between law in action and law on the books. In my view, one cannot appreciate the role of law and regulation in land disputes without taking the technical aspects of law and how they contribute to construct social realities seriously.

Actor Network Theory as a Methodology for Analyzing Legal Technicalities

The approach I use here will try to perceive law as it is known by the actors involved in disputes over land. To understand how the knowledge of bureaucrats and rural communities on legal issues is created, I follow the methodological insight of Actor-Network-Theory (ANT). As such, human, physical, and discursive elements are all

²¹ Silbey “After Legal Conciuosness,” 360.

mapped out as part of the network of knowledge production.²²

ANT is a distinctive approach to social theory that emerges from Science and Technology Studies. It tries to shift the focus of social analysis out the “taken for granted macrosocial systems on one hand, and bits and pieces of derivative microsocial details on the other”, and instead considers knowledge, the product of science, as “a process of "heterogeneous engineering" in which bits and pieces from the social, the technical, the conceptual and the textual are fitted together, and so converted (or "translated") into a set of equally heterogeneous scientific products.”²³

According to ANT theorists, their approach seeks to re-conceptualize what is at the foundation of scientific knowledge. It contests the core distinctions between persons or humans and things or non-humans that has inspired the production of scientific knowledge for centuries. ANT contends that this dichotomy between, on the one hand, “the natural sciences, which deal with objects; [and] on the other the sciences of interpretation (social science or humanities), which deal with subjects that talk back, interpret back, kick back”, has produced a paralyzing effect upon our efforts to understand and modify our world.²⁴

ANT proposes to break the artificial divide between society and nature that is maintained by both the natural and social sciences by following the rich web of associations between human and nonhuman. ANT makes this assumed division

²² Ron Levi and Mariana Valverde, “Studying Law by Association: Bruno Latour Goes to the Conseil d’Etat” *Law & Social Inquiry* 33 no. 3 (2008): 805-825, 808.

²³ John Law, “Notes on the theory of the actor-network: Ordering, strategy, and heterogeneity” *Systems Practice* 5 (1991): 4.

²⁴ Bruno Latour, “The Impact of Science Studies on Political Philosophy” *Science, Technology, and Human Values*. 16 no. 1 (1991): 3-19.

disappear by consciously challenging the divide with the idea of networks.²⁵

So in this view the task of social theory is to portray these networks in their heterogeneity, and explore how it is that they come to be patterned to generate effects like organizations, inequality and power. ANT suggests that society, organisations, agents and machines are all effects generated in patterned networks of diverse (not simply human) materials. ANT, proposes a different ontological framework under which we explain what is real (or facts). ANT only presupposes that interaction is all there is, and that “we might ask how some kinds of interactions more or less succeed in stabilizing and reproducing themselves.”²⁶ (Law 1991).

In order to follow these interactions ANT proposes to approach spaces of knowledge construction in our own culture/nature in the same way that anthropology has used ethnography to approach the culture/nature of others. As such, diverse relationships are netted together. Just as in the study of all other cultures “cosmology, land ownership, taxonomy, technology, kinship, myth structures have to be brought together”²⁷. In this respect, ANT argues “we are an anthropological culture/nature like all the others.”²⁸

Therefore, for ANT what best describes both scientists and social scientists is that they are, like anyone else, turned toward their colleagues, their instruments, their skills, and the work of their laboratories or offices. They are practicing scientists turning with

²⁵ See: Michael Callon, “Society in the making; the study of technology as a tool for sociological analysis”, in *The Social Construction of Technological Systems, New Directions in the Sociology and History of Technology*, ed. W.E Bijker et al. (Cambridge, Mass: MIT Press, 1987); Bruno Latour, *We have never been modern* (Cambridge, Mass: Harvard University Press, 1993).

²⁶ Law, “Notes on the Theory,” 2.

²⁷ Latour, “The Impact of Science Studies,” 17.

²⁸ Ibid.

skills around instruments, trying to interest and to convince each other, and, in order to do so, introducing into their exchanges slides, tables, documents, photographs, and reports.

By recognizing the actions and effects of both human and non-human agents in the production of knowledge ANT views networks as “a double miracle of the “holding, gluing”²⁹, and tying together of material objects or technological devices (microscopes or folders); scientific concepts (TRF or AIDs), human experts (scientist, judges); and references made to natural phenomena (such as the ozone hole or global warming).

For ANT this double miracle of re-tying the “Gordian knot”³⁰ consists on one hand, of recognizing that Society is not only tied together by human forces. This is only one amongst a wide variety of other ties that get into the social. As a society “we are held also by telephones, electricity, media, computers, trains, and planes”. On the other hand, nature is not only held together by science and its technics. They are useful ingredients and resources, but there are also people, loyalties, institutions, collectives, passions, monies, and many other social ties that make up our understanding of the things in the world³¹.

Under the focus ANT provides, legal knowledge can also be understood as a network of people and of things in which legality is not a field to be studied independently, but is instead a way in which the world is assembled, an attribute that is attached to events, people, documents, and other objects when they become part of the decision-making processes involved in the law.

²⁹ Idid., 16.

³⁰ Latour, *We have never been modern*, 3.

³¹ Latour, “The Impact of Science Studies,” 17.

Following legal technicalities

Several legal scholars have started to work with ANT insights to examine the character of legal knowledge in various expert settings. Especially useful to thinking about how legal knowledge is the product or effect of the interaction of certain kinds of agency (human and nonhuman), certain kinds of aesthetic practices, certain instruments, certain kinds of expertise is to focus on the idea of legal technicalities or technical devices in law.

Annelise Riles, in particular, has studied how legal knowledge is produced, used, and exchanged in the often neglected or overlooked technical aspects of legal knowledge, or legal technicalities. Her own view is influenced by ANT descriptions of scientific instruments as not only epistemological and material objects but also agents.³² Similarly, in order to trace the interactions between actors, actions, forms of speech, and material objects found in the legal disputes over land, I will concentrate on the technical aspects of the law that regulates access to land ownership for rural communities in Colombia.³³

³² Annelise Riles, "Legal Knowledge" in *Encyclopedia of Law and Society*, ed. Clark, David Scott (Thousand Oaks: Sage Publications, 2007).

³³ Different authors have called for attention to trace knowledge by following these technical objects as agents that allow or constrain social relations and practices. These physical objects, their durability, circulation, their stylistic form, have helped shape scientific theories as their uses have been shaped by theoretical arguments. See Bruno Latour, *Science in action: how to follow scientists and engineers through society* (Cambridge, Mass: Harvard University Press, 1987). Also when these objects are ethnographically engaged they reveal a certain aesthetic commitment that influences people's practices, whether in prisoner's use of forms or in the way United Nation agreements use stylistic forms, such as brackets, as a way of negotiating texts and solving disputes over their content. See for different accounts of how to relate ethnographically to material documents: Annelise Riles, *Documents: artifacts of modern knowledge* (Ann Arbor: University of Michigan Press, 2006). Taking on these physical objects has also inspired new insights on academic's own work and their use of tools.

Legal technicalities are those aspects that are lacking in self-evident symbolic or cultural content.³⁴ They are simplifying assumptions³⁵ that attempt to make the legal system work without entering into a political conflict or theoretical discussion of each concept or action that is required. They prescribe a particular way of doing/thinking about things; a particular arrangement of actions or ideas that respond to a need for understanding, justifying, or maintaining the perceived coherence³⁶ and stability of law.

Riles has coined the term of legal technicalities, as constellation of elements, a “package” that encompasses diverse, and even at times, contradictory subjects, ideologies and practices

These include: (1) the ideologies – legal instrumentalism and managerialism; (2) the actors – the scholars and practitioners who treat the law as a kind of tool or machine and who see themselves as modest but expertly devoted technicians; (3) the problem– solving paradigm – the orientation toward defining concrete, practical problems and toward crafting solutions; (4) the *form* of technical legal doctrine and argumentation, from eight-part tests to the intricacies of the Rule Against Perpetuities, to the production of stock types of policy arguments such as appeals to uniformity of result and ease of administration on the one hand, or justice in the individual case on the other. These different subjects nevertheless share the simple fact that humanistically oriented legal scholars are liable to find them profoundly uninteresting at best,

³⁴ Riles, “Legal Knowledge”.

³⁵ Duncan Kennedy, “Legal Formality” *Journal of Legal Studies* 2 no. 2 (1973): 351-398.

³⁶ Jeremy Waldron, “Transcendental Nonsense and System in the Law” *Columbia Law Review* 100 no. 1 (2000): 16-53.

and offensive at worst.³⁷

What legal technicalities refer to when they are taken as a constellation of different elements is, “a way of doing legal knowledge, and the cast of experts and tools and artifacts of such doing.”³⁸

Drawing from this perspective of legal knowledge, what is most useful to my study is its attention to the character of technical aspects of law and its instrumental quality. In my view, following Riles, technicalities are taken as ends in themselves, as objects worth theorizing about. In this case, we turn our attention to technicalities, not as mere tools or instruments but as what is foregrounded.³⁹

Throughout this project, I will look at technicalities as concepts or conceptions that allow a particular way of thinking about a legal problem in the context of land disputes. Take, for example, how legal techniques have contributed to the presupposition of a division between persons and the thing (land), framing one as the antithesis of the other. It is through the use of different technical devices embedded in the process of formalization of land ownership that the classic view of land as a thing owned by people is established as given. Technical legal concepts, such as fee simple which designates exclusive rights to the thing owned, are important techniques through which the special character of the relationship between persons and land is

³⁷ See Riles, “A New Agenda for the Cultural Study of Law,” 976; also see Annelise Riles, *Collateral knowledge: legal reasoning in the global financial markets* (Chicago: University of Chicago Press, 2011), 64.

³⁸ Riles, *Collateral Knowledge*, 65.

³⁹ Annelise Riles, “Property as Legal Knowledge: Means and Ends Riles” *Journal of the Royal Anthropological Institute* 10 (2004): 775-795

defined and at the same time act as a pattern to understand new situations of ownership over things.⁴⁰

Legal technicalities are also rules that regulate specific actions, competencies and responsibilities of institutions and officials. They consist, for example, of administrative procedures that regulate and determine the responsibility and scope of action of public functionaries; technical standards, requirements and methods of evaluation used by government officials in the process of granting land to *campesinos*; as well as other legal mechanisms used to grant land ownership in rural areas, such as the figure of agrarian familiar unit (Unidad Agrícola Familiar – UAF) or illegal fragmentation of land. I also include under legal technicalities some of the forms of technical speech registered by people involved in the application of such rules, most often legal experts, and *campesinos* own attempts to use these technical language.

Finally, I will be looking at material objects as legal technical devices. These material elements are used in the production and implementation of legal provisions regulating land property for *campesinos*. They consist of objects such as seals, forms, signatures, databases and documents, vis-à-vis the practices these objects entail (such as, the transferring of textual forms from one document into other as in crafting standard letters, form filling, documents filing or collection of information in databases). I posit that contact with these technical devices common in the work done in legal settings is an important part of what bureaucrats and communities experience as law in the context of land disputes. To appreciate the work performed by these objects allows the reader to see legal technical knowledge being produced, used and exchanged in the

⁴⁰ Alain Pottage and Brad Sherman, *Figures of Invention: A History of Modern Patent Law* (Oxford, England: Oxford University Press, 2010).

interaction of bureaucrats and *campesinos*.

There are different characteristics of these technical aspects of law that are relevant in the context of legal disputes over land in Colombia and that will be discussed below.

Legal technicalities as a way to compartmentalize politics

Analysis of legal technical devices in disputes over access to land in Colombia shows how the political debates introduced in the first part of this chapter dissolve in practice into other kinds of conflicts. Characterizing these debates through a flat reading of the role of law as oscillating between market and state regulation is far too simple to account for the legal knowledge practices of the actors in their implementation of law. The focus on the legal technicalities pertaining to land reveals that officials are more concerned with conflicts that are of a technical, legal, institutional or procedural kind—different from the political discourses of land ownership. In fact, these technical devices are important to set the limits, make distinctions and compartmentalize politics at play⁴¹.

To provide an example from the field, it is clear that, despite the fact that the model of land distribution has changed several times over the years, some of the technical devices to collect information about land remain the same from one law to the next. According to one of the staff members at Incoder, some of the processes and technical devices to collect information about land, such as legal titles, real estate appraisals of land or certificates of registration have not changed. The everyday work of these

⁴¹ According to Riles “It is through these practices that political legitimacy—the kind of legitimacy that is hallmark of the liberal state— is created and manipulated”. See Riles, *Collateral Knowledge*, 65.

officials stay constant and consists in dealing with these devices and solving the conflicts and indeterminacies of these legal technical devices.

Legal technical devices as the core of law as a practice, crucial in the materialization of substantive claims

These legal technical devices, often regarded as minor details to socio-legal scholars, make a crucial difference in dictating who gets access to land in rural areas. As Riles states, “the technical dimension of law is, empirically speaking, the core of law as a practice.”⁴² In fact, legal technical devices may even be more of a determining factor than the general legal provisions contained in the law.

When deciding upon a course of action, legal officials base their behavior on these legal technicalities more so than on the regulation containing in laws drafted to regulate the state of land ownership in rural areas. Moreover, through the experiences that *campesinos* have had with a highly sophisticated set of technical devices, they have developed different ideas of what law is and have implemented strategies to interact with this set of technical devices.

Legal technicalities as producing a stabilizing effect and complex temporal gestures

Technicalities gain their potential to constitute legal meaning as they are consolidated over time. Whether at an epistemological level or at the level of physical objects, their mechanic repetition implies a sense of harmony, a stabilizing effect that avoids

⁴² Riles, Ibid., 67.

arbitrary changes or prevents destructive tactics that threatens the whole of society.⁴³

However, besides exploring this sense of harmony that the repeated use of technicalities gives over time, the focus on technicalities pushes forward a sense of time awareness that brings us to explore these technical aspects in different temporal settings: from their production, circulation, interpretation and archiving. The work on technicalities reveals extremely complex and sophisticated temporal gestures. For example, bureaucrats in their every day life routines of handling documents regarding the land subsidies come to conceive land and persons as complete entities, portrayed as much in the documents they use. Some of the problems officials most commonly face in their work are when such devices fail to render the complete person or thing (land) as complete.

The power of technicalities

Technical aspects of law play an important role in everyday practices of those involved in legal disputes. Technical aspects of law are standardized models of action or thought that, as shorthand ways to obviate theoretical re-conceptualizations or ways to avoid conflict among actors, display a power quality that does not only depend on human action.

Neither the applier nor the receiver has unconditional control over the technical aspects of law once they are set in action. What might start as a mere instrumental use of technicalities (means to ends) loosens up to a point where the technical aspects are appreciated for their own sake. The preponderance of means over ends is of very frequent occurrence in law, where technicalities have the power to cause users to

⁴³ Kennedy, "Legal Formality," 357.

forget the ends in favor of the means.

Legal technicalities “produce, stretch, or abbreviate different types of agency”.⁴⁴ Technical devices discipline certain responses from human and nonhuman agents. A possible example could be the handwritten documents used by rural communities copying some of the formalities of a legal title in order to secure the transfer of land as in the “*carta venta*” document.

Structure of the project: Tracing legal documents and the file as an organizing mechanism

Finally I want to refer to the role that legal documents have in defining the scope of this project. One of my early observations in the field trying to locate the production, use and circulation of legal technical knowledge in the dispute over land was that the everyday practices of officials and *campesinos* were not so much focused on discussing the rules or the political motivations behind regulation but on the handling of documents. Of course, both groups made references to regulation or the politics once engaged in conversations over land disputes. However, when it came to following the particular set of practices of officials (granting access to land), and *campesinos* (seeking access) what became apparent was that both groups spent countless hours and energy in handling different legal documents.

Material documents are crucial technological devices through which particular technical, institutional, political, legal, and economic arrangements gain solidity and

⁴⁴ Riles, *Documents*, 21.

durability.⁴⁵ The officials and *campesinos* practices of handling legal documents produce, articulate, circulate and exchange legal knowledge between parties. Legal documents make possible the interaction between officials and *campesinos*. By looking at legal documents as a legal technology both actors can be put in the same plain of analysis –without falling into the rigid conception of *campesinos* as actors from pre-industrial societies–, along with material objects, particular ideologies and legal concepts.

Just as Latour finds that judges in the Conseil d’Etat in France achieve confidence in establishing facts as unquestionable by the handling of the judicial file, officials in charge of granting access to land achieve their idea of the plot of land and person applying to the land subsidy by handling of the file. Officials achieve this sense of closeness by making short referential chains that consist in “superimposing layer upon layer of documents and tracing, which are very different in terms of their materiality (photographs, documents, and plans) but which by their nature keep information intact across a play of transformation.”⁴⁶

Moreover, Latour observes how the textual document has played a pivotal role in the production and circulation of expert knowledge. The document allows “Realms of reality that seem far apart (mechanics, economics, marketing, scientific organization of work) (to become) inches apart, once flattened out onto the same surface”. He asserts that “Economics, politics, sociology, hard sciences, do not come into contact through the grandiose entrance of “interdisciplinarity” but through the back door of

⁴⁵ Riles, *Collateral Knowledge*, 45.

⁴⁶ Latour, Bruno, “Scientific Objects and Legal Objectivity” in *Law, anthropology, and the constitution of the social: making persons and things*, eds. Alain Pottage and Martha Mundy (Cambridge: Cambridge University Press, 2004), 100.

the *file* (...) the most despised of all ethnographic objects.”⁴⁷

However, he goes even further in the importance he places on documents in shaping the work of theories and the production of intellectual knowledge. Mobilizing inscriptions or documents by superimposing document over document, allows us to recombine several images of totally different origins and scales. The superimposition of documents is central to the heath of intellectual knowledge:

To link geology and economics seems an impossible task, but to superimpose a geological map with the printout of the commodity market at the New York Stock Exchange, requires good documentation and takes a few inches. Most of what we call “structure”, “pattem”, “theory”, and “abstraction” are consequences of these superimpositions (...). Levi-Strauss’s theories of savages are an artifact of card indexing at the College de France, exactly as Ramist’s method is, for Ong, an artifact of the prints accumulated at the Sorbonne; or modern taxonomy a result of the bookkeeping undertaken amongst other places at Kew Gardens.⁴⁸

The file project for a land subsidy (Figure 1) incorporates the life of persons, land, and other legal devices used in law. The content of such a file is determined by the Terms of Reference document, a legal organizational device by which the officials at the Management Office of Incoder establish their actions and from which they shape their perception of facts (described in chapter 2). However, the file project for land subsidy

⁴⁷ Bruno Latour, “Visualization and Cognition: Drawing Things together”, in *Representation in Scientific Practice*, eds. Michael Lynch and Steve Woolgar (Cambridge, MA: MIT Press, 1990): 19-68, 25.

⁴⁸ Idid., 19.

fulfills an additional role in my research project. The file for land subsidy provides the structure for how this dissertation research unfolds.

In the file project for land subsidy several documents are found. Along with the letter of presentation for the project, *campesinos* have to complete a number of annexed documents that will be described in detail later. A copy of legal title is also part of the file, along with a certificate issued by the Office of registration attesting that the plot of land is free of encumbrances. Additionally, the file contains a topographical map of the land, a sworn statement of intentions to negotiate the plot once the subsidy is approved, and a real estate appraisal of the land. Several photocopies of national IDs, birth certificates of other members of the household, letters of displacement from *campesinos* that were violently force out of their territory by violence, and certificates of incorporation of the legal persons *campesinos* have created are also part of these legal file.

This research is organized in a similar style to the subsidy folder encountered at Incofer. This similarity appears in two different but complementary ways. First, each of this dissertation's chapters are made by flattening out into a text the worlds and experiences accumulated during my years as a lawyer activist and academic confronted with problems experienced by *campesinos* trying to access land ownership. This two-dimensional text attempts to do justice to the many stories, lessons and personal life experiences entrusted to me by my informants. As the technology the document itself reveals, this is too is a particular reification of a number of interactions the writer has had with both human and non-human actors.

Secondly, the research project takes on some of these legal documents in each of the

chapters in order to produce different kinds of analysis. Just as the folder, by superimposing layer upon layer of documents, can establish unquestionable facts about the plot of land and the persons applying; this project, by superimposing chapter after chapter, arrives at an underlying theoretical claim. It outlines a theory of formalization of life actions through legal technical devices. In particular, it analyzes land ownership as a reification of a relationship between persons achieved through the wax seal of the public deed at the notary house (in chapter 4 and 5). –The deed is the most important document found in the folder.

Finally, by superimposing chapter after chapter, each of which containing a particular analysis of different legal documents found in the subsidy folder, this dissertation aims at providing an account of the problem of land disputes and rural reform that is quite distinct from how this problem has been traditionally viewed in Colombia. Its focus on legal documents allows for a different understanding of the role law has played in land disputes in Colombia.

This research project as a whole, just at the file project for land subsidy, attempts to give a new and encompassing view on how these technical legal devices articulate the practices of the different actors involved, the legal concepts used in law to regulate land ownership, the tools used and the important role legal devices have in shaping people's ideas about law, persons and land.

Furthermore, this dissertation contests some of the assumed ideas of socio-economic analysis of land and socio-legal scholarship. These accounts have overlooked the most technical aspects of law in disputes over land. In summary, this project seeks a way out from the instrumental conception of law that leaves law pertaining to land

ownership always gravitating along the spectrum of contested political forces (between market or state regulated approaches to land access).

Chapter 2 traces the bureaucratic knowledge practices of two different actors (officials and *campesinos*). This chapter seeks to contest the idea that bureaucratic knowledge practices only happen in the modern state or in the most advanced institutions of capitalism.⁴⁹ Instead the chapter tries to highlight the commonalities between the practices and uses of legal documents by the bureaucrat at the management office of Incoder and *campesinos*. Legal documents create different kinds of subjectivities. In the case of bureaucrats the Terms of Reference document defines and shapes the roles and actions of legal officials and project evaluators. In the case of *campesinos*, the making of the “*Carta venta*” document, a private document that reproduces some of the technical devices of a formal land title, allows for the appearance of a new kind of subject, a new kind of bureaucrat, the *campesino* leader. This new bureaucrat, permeated by institutional practices, has started to reproduce some of these legal technical devices in his own life transactions. The chapter describes some of the complex interactions between this new bureaucrat with officials and other *campesinos*.

Chapter 3 presents a new rural landscape characterized by the circulation and exchange of different legal documents. It contests the idea, common in the socio economic analysis and development reports in Colombia, of imagining the rural landscape as isolated, marginalized, and far removed from modern life. I argue that this view misses some of the highly interesting and rich complexities that can be spotted following the interaction of *campesinos* with documents, officials and

⁴⁹ Max Weber, “Bureaucracy” in *From Max Weber: Essays in Sociology*, Max Weber et al. (New York: Oxford University Press, 1946).

institutions. This alternative account of rural landscapes presents new evidence of how displaced *campesinos* interact with some of the legal technologies set by law to answer to their humanitarian claims, such as, the letter of displacement, the act of incorporation of the association, or the judicial decision known among *campesinos* as the “‘fallo’”.

Chapter 4 is an aesthetic analysis of the land ownership title. It recreates the process of transformation both at a conceptual level in the law and at a material level in the land that makes land become a thing to be owned by persons. The chapter describes how such transformation is possible through the legal technical device of the sealed document. It is the technology of the seal that solidifies a particular relationship in which land is created as a thing susceptible to being divided in the material world as well in the legal world. The chapter uses the technology of the seal to explain not only the effects produced in landownership but also the effects this legal technical device of the official seal achieves in producing the imprint of western legal thought.

Chapter 5 explores the consequences of the discovery of the technology of the seal document as the technology that creates landownership. The chapter illustrates some of the effects such conception of ownership has for *campesinos*. This exploration on the effects produced by seal document challenges some of the assumptions made by institutional economist, like Hernando de Soto, who has strongly advocated for land titling in third world countries. Finally, the chapter argues that socio legal scholars in Colombia have overlooked the outcome produced by these legal technical devices – in particular the technology that solidifies landownership—when looking at the role law has in the legal culture in Colombia.

The concluding chapter focuses on the character of the dissertation as a technology in itself. The organization of the chapters into a folder-style form and the production of two-dimensional objects such as texts that produce certain effects in both the writer and the reader of the dissertation. The chapter narrates the process of transformation of both the project and the writer in the making of the dissertation-folder.

CHAPTER 2

WHEN PEOPLE ARE MADE INTO DOCUMENTS: FOLLOWING BUREAUCRATIC PRACTICES

Introduction

This chapter looks at how dealing with the written documents shapes people's knowledge practices. My approach illustrates how people knowledge practices go hand in hand with the kind of materials bureaucrats work with: documents, databases and folders.

To trace the production of legal knowledge by focusing on the written documents, I draw on Latour's radical statement of how bureaucracy is embedded within the files themselves:

The "rationalization" granted to bureaucracy since Hegel and Weber has been attributed by mistake to the "mind" of bureaucrats. It is all in the files themselves. A bureau is, in many ways, and more and more every year, a small laboratory in which many elements can be connected together just because their scale and nature has been averaged out: legal texts, specifications, standards, payrolls, maps, surveys (...)The "cracy" [comes from the *kratos* or power] of bureaucracy is mysterious and hard to study, but the "bureau" is something that can be empirically studied, and which explains, because of its structure, why some power is given to an average mind just by looking at files : domains which are far apart become literally inches apart ; domains which are

convoluted and hidden, become flat ; thousands of occurrences can be looked at synoptically.⁵⁰

This insight provides a starting point for my exploration of the documentary practices at institutional settings. My focus illustrates how bureaucrats are only confident to speak about the world once it has been transformed into written texts. And at the same time how the textual universe produced “has the double peculiarity of being so closely linked to reality that it can take its place, and yet [remain] unintelligible with an ongoing work of interpretation.”⁵¹

At the same time as this textual universe ends up influencing and shaping our own knowledge practices, it also generates an incessant activity of new texts and new technological devices whose quality, order, and coherence will increase the complexity, disorder, and incoherence of the situations they are trying to normalize and/or legalize.

The bureaucratic space this chapter describes in the first part is the central office of Incoder in Bogota. Incoder (The Instituto Colombia de Desarrollo Rural) is the office responsible for the development and implementation of programs directed toward improving the living conditions of communities in rural areas. Among its missions is the provision of resources for the acquisition of land by *campesinos*. This assignment is performed at the Subgerencia of Gestión (Projects Management Office), the office in charge of implementing the subsidy to buy land for *campesinos* and internally displaced persons (IDPs).

⁵⁰ Latour, “Visialization and Cognition,” 25.

⁵¹ Latour, “Scientific Objects and Legal Objectivity”, 96-97.

I describe how officials at the Management Offices articulate many of their knowledge practices based on a very peculiar document: The Terms of Reference (TORS). I explore the multilayered set of relationships for officials and project evaluators working within this document, and how is it that TOR's implementation by staff at Incoder ends up creating a particular kind of reality of law, of land and *campesinos* all together.

The second part of the chapter aims at looking into the knowledge practices produced in relation to the documents from the opposite end: the open space of rural life where *campesinos'* interaction with land takes place. I move from a closed setting of bureaucrats' everyday work in the subsidy to grant land at the Incoder, to an open area, where the issue of obtaining access to land is one amongst a variety of issues with which rural communities have struggled in their daily lives. The focus on documents allows me to connect the practices of officials at bureaucratic offices with the documentary practices in rural settings.

Traditionally, bureaucracy has been conceived as developing "only in the modern state or in the most advanced institutions of capitalism."⁵² This chapter explores the idea of bureaucratic practices outside of the environment of a closed or circumscribed office.

I posit that in a space such as the rural community of el Sena where are found the "*carta venta*" documents, there is a new kind of person, a new kind of bureaucrat, whose role is to operate as a mediator, between the world of institutional practices and the internal dynamics experienced in the world of rural communities.

⁵² Weber, "Bureaucracy," 196.

The *campesino* leader, seen as this new bureaucrat in charge of dealing with institutions and their practices on an everyday basis, has adopted a new role. S/he, like no other, has experienced the everyday practices of institutional procedures and bureaucracy. Her/His actions and experiences start resembling some of those observed for officials in bureaucratic settings. This person not only helps translate and articulate the community's demands to the institutional level, but in the process, s/he also suffers a number of changes in her/his life as part of her/his new status within the community. In this second part I show how the contact with legal documents, in particular the crafting of "the *carta venta*" as the legal title to land, ends up influencing *campesino* leaders' own views and actions under which they understand law, land and persons.

The engagement with the TORs folder for officials at Incoder and with *carta venta* documents made by one of the community leaders, allows me to explore a whole genera of subjectivities deployed by officials and *campesinos* when interacting within these institutional forms.

Finally, in this chapter I provide some examples that show how officials and *campesinos* at certain times are not so far apart from each other. Contrary to what most literature in socio-economic scholarship has characterized as an antagonistic relationship between *campesinos* and the state in land disputes.⁵³ State officials and *campesinos* in some circumstances share a similar view of what law does. Both groups sometimes agree on the perception of law as mediated through the use of

⁵³ See for example: Mauricio Archila and Mauricio Pardo, *Movimientos sociales, Estado y democracia en Colombia* (Bogotá: Universidad Nacional de Colombia, Centro de Estudios Sociales, 2001); also Carlos Salgado, *Los campesinos imaginados* (Bogotá: Instituto Latinoamericano de Servicios Legales Alternativos-ILSA, 2002).

documents - those documents necessary to grant access to land.

Some *campesinos* already take for granted the use of such documents, others, however, experience a strange feeling of having to use these papers to close down transactions that used to be done orally. Very often *campesinos* complain that the government requires these papers in order to complicate the process for obtaining benefits. Ironically, some officials at Incoder support this position; whereas, some officials see the use of documentary forms as too rigorous or unfair for *campesinos*, others see it as unavoidable in order to protect the subsidies' system from fraud.

What is most interesting is that both *campesinos* and officials conceive law and the legal technology of the legal document as mechanisms to provide security, to close a particular problem or recognize a particular relationship that will help them push their interests forward or that will help them mobilize their claim. However, both groups still quite uncertain of each other intentions in the use of such documents, as the technology of the legal document never renders entirely complete the quality of the thing or person.

Legal Documents used to define the limits of particular interactions -in order to make the process of land subsidies more secure and avoid further disputes- become also the vehicle under which people build up untrustworthiness towards the other.

The landscape of Incoder

My fieldwork at Incoder took place between September of 2008 and March 2009, in a continued state of uncertainty for both the ethnographer⁵⁴ and the staff at the Institution⁵⁵. In fact, you can perceive an institution going through continuous changes from the moment you step in front of the raw structure of the building.

During those seven months I visited the offices of Incoder, not only the building facade underwent several processes of restoration but the staff at the office changed constantly; three different managers directed the subsidies program to grant land to *campesinos* during my fieldwork.

The management office was relocated three times on different floors inside the building. First on the fourth floor next to the evaluation room, then on the first floor in an open space merged with other divisions from the institution, and finally on the third floor where it had a large office to accommodate all officials working in the program.

Moving equipment, folders, desks and staff around the building demanded a lot of effort, created logistical inconveniences and caused some discontent among the staff as well. One of the officials described the impact of such a chaotic situation on her

⁵⁴ Initially the staff at the Management Office welcomed my presence at the office and were available to talk to me and provide me with information. However, with changes in the direction at the Management and given the increasing level of criticism received by the program and the Institute from the media as well as the initiation of some lawsuits, my presence aroused suspicion. In the last months I had less access to documents or information and officials were harder to interview.

⁵⁵ During my presence at Incoder Law 1152 of 2007 (that created Incoder's present structure and assigned responsibilities) was struck down by the Constitutional Court. Staff at Incoder, although surprised and afraid that they would lose their jobs, kept working for several months without knowing if the Institute would close. Eventually the Ministry of Agriculture reformulated the subsidy. During my fieldwork at the Institute there were at least ten news articles regarding the issue of land in Colombia criticizing the role of Incoder. Staff at Incoder hears, reads and circulates these articles amongst themselves. They are well aware of the controversies and scandals of corruption that have damaged the Institute's reputation in the past. Their own beliefs and positions regarding land and their own work at the Institute take such criticism seriously.

work and expressed her discontent with the constant movement and poor management within the institute:

“We have to work with our fingernails here. It is very disorganized. I think that everything that is logistics of physical spaces and resources is poorly planned. For example the other day we ran out of file boxes for the projects, and there were no more boxes! How that can happen in an institution? I mean, we are asking for boxes, is not like they are cars or telephones!”⁵⁶

Likewise, during my visits to Incoder the south wing of the second floor was been remodeled to locate the offices of UNAT (Unidad Nacional de Tierras Rurales-Rural Land National Unity) created by law 1152 of 2007⁵⁷. It took several months to complete the work, but the office had to be closed immediately when in March of 2009 the Constitutional Court struck down the law and all the initial arrangements had to be withdrawn. The UNAT office, its personnel and its responsibilities had to be liquidated before the Unity had become fully operational.

In contrast with the hectic environment experience in most of the Institute, on the fourth floor, aside from everything else, there was the evaluation room. In this room a third party contractor to the Institute, called, *Coorporacion para el Desarrollo de la*

⁵⁶ Interview, May 12, 2009.

⁵⁷ UNAT was a new office created by Law 1152 of 2007 that had the responsibility to clarify the public land and define new projects for its use. This new design in the structure of the Institute responded to the claims of excessive bureaucracy and corruption made to the Institute in the past. Previously, In 2002 Incora was merged with other public institutions that provided technical assistance to the agrarian sector that had shown poor results over the years, creating Incoder. In 2007 Incoder was redesigned again as part of a legal strategy pushed by the government to modify the system of rural reform into a new policy of rural development. Law 1152 assigned functions for each division at Incoder and it also allocated some of Incoder's responsibilities regarding land outside of the institute. In these circumstances the Institute had less impact on the distribution of land.

Microempresa, performed the final technical evaluation of the productive project for land subsidy⁵⁸.

This large room was kept out of reach of frequent visitors - even to some of Incoder's own staff who bitterly complained of not knowing what happened "behind the iron gate of the evaluation room"⁵⁹. The room was organized with a number of photocopiers, and lines of desks, computers and folders, where evaluators worked with the database of the project, uploading information contained in the project folder, or completing some of the technical concepts required.

Despite the fact that both staff at Incoder and evaluators were never too close and never mixed informally with each other. In fact, they would come and go Incoder building at different times and will leave for break in different groups. Both groups worked together with the folder for the land subsidy project and shared a particular devotedness to examining each document included in the folder.

The Terms of Reference (TORS)

The TOR consists of a booklet explaining how the subsidy to buy land works⁶⁰. It creates the framework under which such application takes place. The application of

⁵⁸ The central role of Incora (today Incoder) in leading projects of land distribution for poor rural families has also suffered radical changes from its beginnings. Over time, Incoder, as the main player in carrying out Rural Reform, has been the object of several reforms leading to the downsizing of the Institute. Incoder has dropped a number of functions that it had before and at the same time, reduced the active role that the government has to play in acquiring land for poor rural communities. Now, a third party contractor, external to the Institute, carries out evaluations for the land subsidy.

⁵⁹ Fieldnotes, October 24, 2008.

⁶⁰ The content of these terms of reference and annexes were taken directly from Law 1152 and other regulatory acts that developed the contents of the law in detail. Its creation also drew from the terms of reference developed for the Agro Ingreso Seguro program, or AIS, implemented by the Ministry of Agriculture. When Law 1152 was struck down, within a month lawyers at Incoder had found an alternative to accommodate and legalize the routine activities of officials during the time when they

the subsidy is a competitive process whereby the *campesino* applicants have to submit a project in order to justify their need for land in addition to a number of items to establish their identity and pertaining to the land where they plan to develop an agricultural project. Both individual and joint applications are allowed, and resources are more likely to favor joint applications such as groups of qualified *campesinos* who are internally displaced.

The TORS sets up the rules for applying to the subsidy. It explains the different steps to be taken, the amount of resources to finance land projects, the different documents necessary to participate in the project, the items to be evaluated such as soil types, the required area of the plot available for agricultural use, the econometric methods of evaluating the productivity of each project, the requirements for potential beneficiaries (identification, the condition of rural worker), etc.

Half of the booklet contains a number of annexed documents and forms *campesinos* need to fill out in order to be considered potential beneficiaries for the subsidy. *Campesinos* have to complete six different annexes in order to apply⁶¹. The annexed documents included in the terms of reference fulfill a special function. Some of these annexes provide information regarding the quality of land and its real estate appraisal value (Annex 5). The annexes also give details of how to design the economic project that has to accompany the application to the subsidy (Annex 6). They also outline how

operated with no law. As a result of legal technical analysis they recommended, instead of using article 62 of Law 1152, that to establish the subsidy, what was needed was to substitute in place of the law article 26 of Law 1151 of 2007 and to complement it with Law 160 of 1994 (the re-born Law of Rural Reform). Subsequently, Incoder issued a new decree providing legal grounds for the implementation of the subsidy: Decree 2000 of 2009. This strategy allowed Incoder to maintain almost unchanged the structure for the land subsidy.

61 The number of annexes has varied during the three periods the application for subsidies was open. Other internal mechanics for reviewing the documentation at Incoder have also changed each time.

to craft a sworn statement to sell made between applicant and the potential seller of the land (Annex 3), or the letter of presentation for the project (Annex 1). Other annexes are forms *campesinos* have to fill out such as the project summary card (Annex 2).

Each of these forms consists of requirements mentioned in the TORS and they are an important part of what officials review and file on each of the folders, together with additional documents requested by TORs such as the land titles, the certificate of registration of the land, applicant's identifications, acts of incorporation of the Association if it is a joint application, and the topographical map of the plot. All these documents constitute the folder required for each of the land subsidy projects.

Some documents and annexes are considered to be essential to the project and the application will be rejected if these documents are not received, such as the land title or the sworn statement; others are details in the law that are considered to be logistically important since they help organize the work of staff, such as the summary card. Some of these forms are highly sophisticated and ask *campesinos* to specify in great detail all the items that are part of the project (Annex 5 and 6) where as other forms do not require any assistance (Annex 1). Some of these documents that are used for organizational purposes and that do not constitute an essential requirement for the application would probably not have such importance but for the fact that the TOR states that one reason to reject the application is "when all annexes are not filed with the application."⁶²

But most importantly, TORs play a crucial role in articulating many practices of Incoder's staff and evaluators. Both officials at the management office and the project

⁶² Fieldnotes, September 3, 2008.

evaluator see in TORs “the rules of the game” in the process of granting subsidies to *campesinos*. TORs are used constantly as a source of authority or constraint when staff and evaluators are asked about a technical procedure, to explain a part of the process or to simply explain what they do in a normal day. TORs provide a sense of certainty and stability for officials in the interaction with *campesinos* over land.

However, as it will be explained below, during the normal course of an official's day, they will make decisions which will influence the livelihood and desire of *campesinos* to obtain land which would be bound to the TOR. Their every day job is to solve the indeterminacy of situations that arise from the interaction through documents concerning a plot of land *campesinos* are trying to obtain. As will be shown, though the TORs are intended to establish the “rules of the game” to create stability and certainty, and despite officials' constant reference to the booklet in order justify their actions and define their role within the program of subsidies, the sought for stability and certainty is never quite achieved.

The TORs define the roles and knowledge practices of these different actors involved in the process of granting subsidies. These range from writing formal replies to *campesinos'* complaints, to drafting legal concepts on issues related to the process of application, to designing the database that collects all information regarding each application, and to how information gets inputted into the database, filed in folders or archived. In all these activities the TORs are the guidelines for orientating staff activities and they influence the way people direct their everyday work and think about these issues of law, land and people.

The materialization of TORS into the folder and the database

The TORs goes beyond just defining the role of persons working with the booklet document. The TORs in its handling and implementation undergoes a process of material transformation. From the moment the required documents are received, officials at the management office take great care to verify its content, number each page, order them, and ultimately file them into a folder. Each project application represents a folder.

Subsequently, each project folder is entered into the database by evaluators. The database tries as hard as possible to resemble the terms of reference outlined for the subsidies project, but as will be explained later in detail, the database technology adds a new stage of transformation to the TORs.

All the information collected in the database is used for the final evaluation, then evaluators add new inscriptions in the form of new text to the project file. The database is also used by management officials who access the information in order to write correspondence letters when requests are made by *campesinos*.

Additionally, the information in the database is used for creating tables and charts to monitor the development of the subsidies program. Officials use these tables and charts to report to their directors at the Ministry of Agriculture or to post institutional reports at Incoder's website.

Finally, legal documentation of adjudication of the subsidy is issued in accord with the information downloaded from the database.

Management Official and the fixing of the folder

Fixing the folder for each project that arrives to Incoder takes the greatest time and energy of officials at the Management Office. Officials initially review each of the documents required: legal documents such as the land title, certificate of registration, and the sworn statement as well as check the technical documents such as the real estate appraisal, the topographic map of the plot, and the formulation of the productive project.

Just as Latour observes in the practices of members in the Conseil D'Etat "paying as much attention to the form of bureaucratic stamps and endorsements as they do to the proper layout of paragraphs or correct punctuation,"⁶³ officials at Incoder pay great detail to the signatures, notarization stamps and fingerprints often requested to accompany documents regardless of the document's actual content or the lack thereof. According to the officials themselves, if the document lacks these technical requirements then it loses all its validity.

For government officials these requirements are of such importance that in fact most of their work conversations gravitate around fixing the problems with different documents in the folder. Informants at the Management Office told me how during the first attempts at implementing the subsidy there were several problems reported because of numerous defects with technical requirements in the applications.

In most cases documents had to be returned and the applications rejected. With Annex 1 for example, this was a letter of presentation and commitment was a formal letter

⁶³ Latour, "Scientific Objects and Legal Objectivity," 98.

applicants had to fill out explicitly mentioning the number of families for the project and their promise to follow all the terms of reference. According to some staff and in the case of rejections due to this particular annex, people very often forgot to sign these forms and therefore their projects were returned. Their projects were rejected for lack of signature during the first attempts of implementing the program. Overtime staff at Incoder have allowed the documents to be returned to the *campesinos* to be fixed and returned.

Another document, Annex 4 (the sworn statement) is a legal document *campesinos* need to compose and sign. This is a public statement where both the owner and the *campesino* meet to agree the sale in case the subsidy is approved; this act has to take place in the presence of a notary. *Campesinos*, who were not used to this formality would very often send the document without the proper signature from the notary, or following the advice of others and in their own desire to do things even better, would send other legal documents, such as a promise to purchase and a sale agreement.

According to the TOR, *campesinos* have to file a valid copy of the property titles from the plot of land they plan to buy if the subsidy is to be granted. Many applications were rejected or sent back to be fixed because of the absence of an official stamp in the copy of the title. Staff at Incoder only recognized as valid copies of property titles that had been previously certified as such by a notary public.

As one of my informants put it,

“Everything can go well but if there is a problem with the title [of the land to be purchased], the project fails. There are a lot of projects that fail for that reason because a lot of plots have difficulties with the title. Among the

common problems is that the area and boundary of the plot to be purchased are not set apart from the area and boundaries of the bigger plot from which it is subdivided. Material division of plots is carried out and there is no an update of the new area and boundaries of the subdivided plots. Notaries also do not amend these mistakes. Furthermore, the Offices of Registration are only concerned with registering the information submitted so they have not updated the information.”⁶⁴

The role of law in organizing the folder

Officials spend their day trying to deal with *campesinos'* difficulties with the TORS, encountering all kinds of problems not only with the documents sent but with applicants' behavior. Such situations often times challenge the neatness and straightforwardness of the process outlined in the TORS.

One official reflected on this point: “*campesinos* do not have a lot of stability [unlike TORS]. After a while they do not want to see the woman to whom they were married when both applied for the subsidy as a familiar unit, the unit is disintegrated and it sinks the whole process for the land subsidy.”⁶⁵

According to another informant, most doubts that officials have about unexpected situations with documents and the behavior of *campesinos* end up being legal, and are resolved by lawyers at the Management Office during the first review, and in case the problem needs further consultation it is then passed to the legal office at Incoder in the

⁶⁴ Interview, August 6, 2009.

⁶⁵ Interview, May 11, 2009.

form of an internal memo.

The legal office's job is to issue a legal concept by reviewing the consistency of the TORS in relation with the facts of the case. Most of the times these difficult cases are not specifically addressed in the TORS and the concepts are determined by the interpretation of the TORS with other laws and regulations which most often derive from civil procedure or administrative law. The legal office then provides a tentative answer that is sent back to the management office to be discussed at a formal forum known as "the Complaints Committee". This legal concept is a document in which the specific point from the TORS is discussed and all sorts of other legal texts from civil and administrative codes are attached helping to arrive at a tentative answer to the problem.

The legal concept is presented before the formal Complaints Committee, consisting of four people including Incoder's legal office director who had issued the concept. Upon reaching the decision a new document is produced in the form of a minute. This new document, as will be later explained, is produced at the management office in order to protect officials against the event of a potential lawsuit or a disciplinary action. Producing formal legal documents is a mechanism by officials to protect themselves. The documents produced in connection to TORS will be further evidence to prove officials were following "the rules of the game" at every step of the way in their daily work.

Lawyers at the management offices double the number of experts from other areas needed to evaluate the technical aspects of other kinds of documents found in the TORS such as real estate appraisal, topographical maps or the productive project.

Legal experts at the office do not only need to answer to difficult cases lacking a direct answer from the TORs, but they verify the technical requirements such as stamps, boundaries and encumbrances. Additionally, lawyers at the management office also provide legal answers to *campesino* petitions in form of letters, and craft the final act of adjudication for the land subsidy- an act that is legally considered as an administrative act or measure.

To most legal experts at the management office the unexpected situations each project folder contains and to which the TORs do not directly answer need to be addressed in legal terms. Only those equipped with legal knowledge of administrative law or legal procedure can address these situations. As one of them put it, “law is the language of the State, state officials can only proceed according what is explicitly allowed by law.”

⁶⁶ Legal experts at the office chose to replay to *campesinos* letters of complains following as close as possible the TORs, and stitching direct paragraphs of the TORs or other laws into their replays.

But if the law is sometimes seen as providing the answer to difficult cases, it sometime also works in the opposite direction. It makes the work for the official more troublesome and demanding in terms of finding the correct legal venue. An official lawyer described to me a difficult case taken to the Committee in which the subsidy was already assigned but the notification of the decision had not been made, so the legal staff did not know what to do and it was left to Incoder’s legal office to provide a legal concept that will help them make a decision:

66 This is one of the founding principles in administrative law. The legality principle in administrative law can have different interpretations. This lawyer in particular refers to a strict interpretation of the principle in which a public official can only do what is expressly permitted by law. Article 6 of the Colombian Constitution.

There is this case that is pending legal concept. The man applied as part of a familial group that apparently was not his own. At the moment we cannot locate the woman that applied with him and she has not been legally notified of the decision to adjudicate [the land subsidy]. If she does not get notified, the deed cannot be signed and the process cannot continue despite the fact that the legal decision to adjudicate was already made at the office. We had adjudicated the subsidy but the problem arises at the moment where we notify the concerned parties. We usually send letters to each person's house telling them to come to Incoder's regional office, but sometimes they have already move and we have no new address, or for a thousand other reasons the person cannot be notified. Well, in this case the women does not appear and the legal office is studying the case to issue a legal concept and send it to the complaint committee to be decided. We believe it is already a given right... so, all regulation about notifications, whether it constitutes a given right or not, and all that sort of regulation needs to be reviewed.”⁶⁷

The application of the TORs and its different perceptions

The thoughts and actions of officials that constantly confront *campesinos'* actions and “the rules of the game” outlined by TORS produce different starkly responses. For some officials, projects are sometime unfairly rejected because of rigorous application of the TORs. There are cases in which this is not even the fault of *campesinos* but that of other institutions' delay or internal errors in providing documentation. Other times officials confront dilemmas as to whether to allow exceptions to the TOR

⁶⁷ Interview, May 20, 2009.

requirements to one group of applicants and not to the rest. In other cases, officials seem to consider the requirements found in the TORS to be legitimate even though they may seem overly strict. The officials perceive that the TORS will guarantee high standards in approved projects, which ultimately result in greater chances that the projects will become succeed; by making strict requirements in the TORs, the Institute creates binding obligations to ensure that people implement the project, preventing *campesinos* from quickly sell the land once they buy it with the subsidy money.

One official, explained his sense of rigorous application of the legal terms in this way,

“The truth is that we are not very flexible, we are radical! We take seriously the seriousness of the application. Sometimes [the *campesinos*] quit if they are not happy with the sum of money made available, which affects other applicants that are part of the joint project. If they have applied as group of families, many times they try to change one person in the middle of the process. The [TORs] is a serious process, and as such, it has its steps. If one person tries to enter the project at the middle of the process, let’s say at the verification of title, or in the evaluation of the productive project, to me that is unfair to the other applicants whose projects had been rejected at an earlier stage.”⁶⁸

However, this same official recognizes how such rigorous application of the TORs does not always achieve fair results:

⁶⁸ Interview, May 19, 2009.

“I know one case that was not even the *campesino*’s own fault. It was just that in the group of applicants there was a person that, because of internal errors at Accion Social⁶⁹, had not been accredited as a displaced person, and he did not have a letter of displacement. It seems that Accion Social does not have their database unified at the central office or does not update the information from the local Ombudsman who issue these letters. So because of this, the project failed to pass for all these families. They had invested 3,000,000 pesos in just getting all the land title copies for the project. Now they are applying again and have to replace the person without letter.”⁷⁰

However, other officials at the Management office consider the strict application of TORs to be a necessary step and highlight the benefits of rigorous application:

“Accion Social has other subsidies to help *campesinos* pay for the costs of the papers [required for the TORs]. We try to help as much as we can, but the idea is not to continue giving away resources, because when [the *campesinos*] get the subsidy with no effort they do not appreciate it. How many parcels are now abandoned? They did not even sell them, or lease them; they did not even work them. That is why the structure of land reform was modified, because they got used to receiving from the State without incurring in any cost. So then they do not invest in the parcel or gave up very quickly. This subsidy model makes reasonable demands of the *campesinos*. They are the responsible for selecting the plot, they have lived their whole lives in the area so they know best where to buy land (...) The idea is that they have to go chose and learn how to

⁶⁹ Acción Social is the institution in charge of managing national and international resources to implement socio-economic programs targeting vulnerable groups and poor families in Colombia.

⁷⁰ Interview, May 19, 2009.

negotiate, do all the paperwork and understand the process, so when they finally get their land they can really appreciate it and enjoy working in it.”⁷¹

Out of the textual record

Despite of all these formal stages to narrow down the interpretation of the TORs and enforce its rigorous application, the staff's every day activities also show many of the areas left open by the TORs for interpretation and informal treatment. There are different situations that are managed outside these formal spaces and textual records.

Oftentimes officials would ask colleges or a senior member how to solve a particular case without issuing a formal memo. Sometimes the Management Office received visits from *campesino* applicants. Officials would hold informal conversations and answer questions of *campesinos* regarding some of the processes for granting the subsidy contained in the TOR without requiring a formal communication.

Officials would receive phone calls or make phone calls to *campesinos* to explain a particular case or request other copies of documents to continue the process. All these interactions, however, fly under the radar of institutional behavior that requires most interactions to be documented and recorded. Indeed, officials' accounts of a rigorous application of the TORs fail to see these moments when informal interaction takes place. In fact, when such spaces for informal deliberation are brought to their attention, officials become uneasy and then law is thought as a way to channel and discipline these informal interactions.

⁷¹ Interview, May 11, 2009.

One of the management staff complained to me about these unexpected visits and how they needed to be channeled.

“Here a lot of [*campesinos*] arrive and the office director meets with them. People just show up. The office of customer service at Incoder is almost inexistent, so people manage to pass reception and they come upstairs to the office and see what we are doing. That is a good thing, but not really, because there should be an institutional channel to communicate with the people and directors. But that doesn’t work in here. People have a thousand questions; there are complaints and suggestions by the thousands. We have a team of lawyers prepared to answer when these situations arrive in proper style.”⁷²

Another non-legal expert at the management office reflected on his own experience of deciding a case informally. He regretted not knowing enough of the TORs and the law. Had he known that the application of the TORs demanded such strict observation, he would have avoided making the decision informally,

“One time we had a case that we decided to deal with among us at the office. There was this project with more than twenty families applying for the subsidy. Four of them decided to split from the rest of the applicants when all steps required by TORs were completed. We had everything done, including the field visit for verification. Then, these four families said we don’t like this plot and sent a letter to Incoder telling us they wanted the subsidy money to buy another plot. This situation was very difficult to solve because the TORs do not provide this kind of change so if four families withdrew, the whole project

⁷² Interview, May 12, 2009.

failed. In any case, they did not withdraw the application. We decided to approve the project with all the applicants and the plot of land initially studied including them as applicants. We knew of the intention of these four families to split up, but we saw all other requirements were fulfilled. I am not a lawyer, so I think as layperson. In my opinion I thought we should approve the project. I was certain that once they saw it approved, they would come to terms with each other and sign the act of adjudication. We issued the resolution adjudicating the subsidy to buy the plot of land, knowing this problem. Nowadays we are in serious trouble. We learned at that moment and this was one of the first resolutions passed. As expected the people finally decided to split up. These families did not want to be part of the project but were asking to receive the subsidy that we have already adjudicated. We screwed it up because we decided to issue the administrative act and therefore they now had a given right. Now we don't know how to solve the situation and we are in trouble because we issued the act knowing the situation. We sent the case to the Complaint Committee and we don't know what will happen. However, we know now, we have learnt how to apply the TORs in this case. The project should fail. We will never do this again.”⁷³

The database-the evaluator

Once the information is verified and all documentation and annexes are attached to the folder, the evaluation of the project is undertaken by a group of professionals from different disciplines such as economics and agrarian engineering. Their job is to

⁷³ Interview, May 20, 2009.

evaluate the viability of the socio economic project to be carried out in the plot of land purchased with the subsidy⁷⁴.

A further transformation of the TORs then occurs from the folder to the database. The folder, in which officials review and organize different documents at the stage of evaluation of the productive project, is transferred to the evaluator's database⁷⁵. Thus, the TORs is transformed into a new technology. Here it is the database that defines the role of the evaluators of the project and shapes their everyday activities. What evaluators do is to work to fill the different items contained in the project's database.

The database is central to all other tools evaluators use in their everyday routines. This technology assembles and gives shape to other instruments. Evaluators work with protocols guiding them to performed the evaluation of the project. Logbooks are kept of the information added to the database. Evaluators work with Excel matrices that summarize the status of the projects and provide information to staff officials at the Management office on the results at particular stages of the application. Word files with charts and letters to *campesinos* are also produced using the database.

In this database, the content of the folder is emptied. In the database evaluators keep track of every project in every item. The database contains: a form for the registration of the project; a matrix where different filters apply (number of id cards, sworn

⁷⁴ The socio economic project and the subsidy to acquired land are intimately connected. Having pass all other requirements set by the TORs if the evaluation fails the project to buy land fails as well. Law 160, and the recently over turned law 1152 of 2007, conceived the land subsidy must always develop a socio economic project with the intention to guarantee the sustainably of the applicant *campesino* family.

⁷⁵ Thus, the evaluator takes the folder and gives a complete review of all the documents before evaluating the productive project. Some times evaluators are so used to seeing the documents in a certain format that when an annex or document comes with another layout they often do not recognize it. In the first implementation attempt, evaluators had to do three different checks of the requirements on each folder since they were not familiar with the documentation and some projects were at first rejected when documents came in another format.

statement letter, certification of representation of the association, among other documents that are required to be annexed by the TORs); a box where the results of studying the legal title are added; another box to add the results of study of soil types, and another for inputting the results of real estate appraisal of the project. Finally, the database base contains a matrix to evaluate the economic productivity of the project to be conducted on the plot of land.

After reviewing all documentation contained in the folder and completing each of the boxes in the database, the evaluator goes on to study the productivity of the project. Evaluators seek to gain an overall judgment of the project, or as one of them said to me in an informal conversation: they try to gain a “subjective idea of the potential for the project”. The evaluation of the productive project is done by completing a numerical evaluation of each of item displayed by the database.

The evaluators review aspects such as the technical consistency of the investment, including the costs of the productive project and the consistency of expected income plans required in annex 6 of the TORs. Following the database they review different additional requirements found in the TORs, namely: that 80% of the land is able to be cultivated; that the land is not located above a certain altitude; that the type of soil is not more than 20% of a particular class; and finally, that the price to pay for the land is less or equal to the real estate appraisal.

Sometimes evaluators at the moment of filling up the project’s evaluation matrix found in the database are aware of the kinds of transformation the TORs goes into when working with the database. They also experience the glitches in the system of evaluation at the moment of completing the information in the database form.

As one of the evaluators said to me “the process of land subsidy depends a great deal on the job performed by the people who designed the database.”⁷⁶ She explained how the way the database is set up highlights some aspects that the evaluators have to follow and evaluate at the moment completing the database numerical matrix.

As she described that the database in some instances fails to account for other more subjective considerations in the process of evaluation of each project that are not included in the matrix. The then evaluator has to add numbers or play with the system in order to achieve the numeric qualification for the project she considers in order to show that the project has promise to succeed. This is done in order to have the project pass the numeric system qualification set up in the database.

The stabilizing effects of the TORs

The set of interactions with documents and computer’s database constitute the everyday activity for staff at Incoder. It is in completing the database or reviewing the documents of the folder what makes these people officials or evaluators.

Moreover, the constant and repetitive exchange with these technologies results in staff working overtime and overlooking or ignoring the glitches and inconsistencies experienced in handling the written document or the filling the database. TOR requirements, in the form each document in folder or the database, are applied without further questioning their purpose or content.

⁷⁶ Fieldnotes, October 25, 2008.

So for example, if the applicants in the process of evaluation of the productive project fail to provide sufficient support of the mentor organization that will help them with the commercialization of their product or if *campesinos* fail to present information in the application on markets available to sell their products, these are serious reasons to discount points from the evaluation. Concerns such as the lack of infrastructure in the applicant's rural area or the condition of vulnerability of the groups requesting the subsidy are hardly questioned at the moment of completing the matrix of evaluation in the database.

Despite the fact that officials and evaluators may be aware of not being able to fit everything in the textual forms or computer database, the use of these technologies provides a sense of closeness and stability to their work. The use of such technologies fill their everyday activities at Incoder with meaning.

Moreover, the staff at Incoder choses to deal with unexpected events in the future or the perceived inconsistencies in their method of organizing or evaluating the content of each folder by relaying information entirely through these technological devices.

Officials use the terms of reference not only as the rules of the game but they allow the TORs in the form of written text or computer-generated data to govern the communication with *campesinos* and other officials. The TORs that have gone through a process of material transformation, from the booklet, to the folder and from the folder to the database, are interestingly keep quite untouched. Their uses in formal replays to *campesinos* is maintained quite literal, despite all the complex work done underground.

Officials not only use the TORs to achieve certainty and stability of their own work, but they let the technologies of the TORs fill out the content of their communication with others. The communication letter from Incoder that informs *campesino* applicants about missing items or documents they have to resubmit for their application or that communicates if the project passed or failed, are issued directly from the database. In these letters written to *campesinos*, officials constantly repeat the TORs. The TORs as chunks of phrases are tried to be maintained as literal as possible along the chain of technological transformation from the reception of the documents at the management office to the final outcome of the evaluation.

The reason provided by officials to such strange form of communication is put forward in this way,

“the literality [of the TORs] is exaggerated, I agree, because we should tell [the *campesinos*] in simple language ‘your project was rejected because this document was missing’, but the criteria here is this and is true that we go against reality. The idea is to give them an answer based on the terms, decrees and laws, with the purpose that in the event *campesinos* sue us we can tell the judge: ‘look we gave them all the explanations. Here are the TORS and laws we used and we did not decide this arbitrarily.’ It doesn’t matter whether *campesinos* understand them or not, it is written there and is proof to the judge that we are doing our part.”⁷⁷

Another lawyer at the management office that crafts the official letters agrees

⁷⁷ Interview, May 19, 2009.

“More or less the idea is not to expose the director of the management office - who is the person that stamps the signature in the letter-, that is the reason for our inclination the literality of the text. If it coincides with what the TORS say other offices that monitor our activities are not going to touch him or press criminal or disciplinary charges against him.”⁷⁸

Officials put themselves to the mercy of such technologies in order to protect themselves from unexpected consequences. For officials, the facts that these letters are difficult to understand for someone outside the Management Office or the Evaluation room matters little. Behind this plain and self-referential use of the TORs, there is a whole world of translations, repetition and glitches happening both at the management office of Incoder and the evaluation room.

The landscape of El Sena: out in the countryside

About a mile and half from downtown María la Baja is the township of El Sena, named after a former government building that used to provide technical assistance and schooling to the town of Maria la Baja through the government program *Servicio Nacional de Aprendizaje* – National Service for Learning (SENA). At the time it was created, a number of houses were built around the SENA building. Today, the deteriorated structure still remains and is used as a local school. The township of El Sena is adjacent to the main highway that connects the cities of San Onofre and Cartagena, on the intersection with the road leading to the town of María la Baja.

⁷⁸ Interview, May 18, 2008.

Between 2005 and 2007 twenty-one *campesino* families arrived in El Sena as they fled from the violence that hit the region.⁷⁹ They quickly assimilated into the rest of the community, becoming an important part of it. Other than being displaced *campesinos*, they were regarded as another set of inhabitants of the poor township. Some displaced *campesinos* already had some connections when they arrived there, which helped them quickly integrate.

Not only have El Sena's inhabitants quickly melded with each other, but the township itself blends in well with its surroundings: the small dust roads and the dozen windowless cement houses half eroded with the passing of time. The old campaign posters hanging from the houses' porches and the tin roofs heated by the sun mix exceptionally well with the green landscape surrounding the houses; as well as the chirping of crickets coming from the river nearby during the late afternoon and the rest of wandering creatures. It is common to see a donkey near the square searching for fresh grass to eat, a dog relaxing under the shade of a tree occasionally barking or chasing after strangers, and a couple of runaway chickens and pigs running in groups around the township.

Most of the families in El Sena subsist on yams, manioc and corn that they grow in self-owned or rented plots around the township. Some of them are able to secure money by working in temporary shifts at farms or from selling some of the surplus of what they produce in the local market, the proceeds of which they then use to buy other items such as oil, meat, or clothing. A number of them have quit working in

⁷⁹ These families came from different areas of Montes de María such as Mampuján, Palo Altico and San José del Playón. Others came from as far as Chigorodó in the nearby province of Antioquia. They all arrived at the township of “El Sena” in the municipality of María la Baja.

agriculture permanently, instead finding jobs in María la Baja or other towns around the area.

However, most of the villagers still work the land. In order to secure a piece of land to work, these families usually purchase small plots with documentation similar to the one referred to above; others rent plots nearby or are given land free of charge by relatives or friends. If displaced *campesinos* are known in the territory or have relatives, it is almost guaranteed that they will be able to arrange for some kind of deal informally where money, or the lack thereof, does not become an impediment. In these cases where trust is already built, a handshake often secures the deal.

In these informal arrangements with friends or of kin, those who work the land acknowledge others as the owners and do so by adequately paying them by giving them small amounts of their harvest at the end of each season. For owners of land, this arrangement is profitable as it ensures their land being harvested, which keeps the land in use, free of weeds, and unavailable to others who might try to occupy it. However, when transfer of money is involved, especially in cases where land is being purchased, a piece of paper which includes the parties' signatures will be used for proof of ownership. These agreements are mostly known as *carta ventas* and they are widely used in the township of El Sena. In fact, in my visits to the community, I found that this group of displaced *campesinos* had *carta ventas* for the parcel where they now live in, and a significant number of township residents had similar paperwork for the land they occupy.

Origins of the carta venta

The *carta venta* document was created by the president of the Association of Displaced *Campesinos* of El Sena, “Asosena” in representation of these 21 families. Juan de Dios Gamarra, the buyer in the *carta venta* agreement I review in this section, is a *campesino* of African and Indian descent who, like many others, exemplifies the multiethnic heritage of the people in the region.⁸⁰ A long standing community leader and a representative of the association Juan de Dios has been displaced by violence on two different occasions⁸¹.

The *carta venta* documents made by Juan de Dios, and for which Juan de Dios paid 5,000 pesos to a local notary in the town of María la Baja to have notarized, describes the purchase of a plot of land that occurred in October 2008.

The land was purchased by each of the 21 families with their own resources and a 4,000,000 peso loan from the local parish of María la Baja. The entire plot is a half-hectare, subdivided into 22 small plots, one for each family and an extra one for communal activities. In most of these subdivided parcels, families have already built a 4x5-square-meter house to live in. Local and international NGOs such as USAID provide tools and materials such as wood beams, cement and nails for these displaced *campesinos* to build their houses.

⁸⁰ Different legal categories exclusively addressed to target *qualified campesinos*, such as internally displaced persons (IDPs) or Indigenous, or Afro-Colombian minorities bring out some tensions or create gaps when confronted with a “messy reality” as the one seen in this community. Very often the legal treatment given to this “qualified subjects,” has marginalized the problem of land distribution for *campesinos* as a broader topic of discussion.

⁸¹ A skillful negotiator, Juan de Dios possesses a charming personality whose eloquence hypnotizes you from the moment you meet him. I had a love hate relationship with him since every time he saw me walking around the square in Maria la Baja, or at any local or institutional meeting, he would come up to me and ask me for help in writing letters to the mayor or other public functionaries, or else he would seek my help in crafting petitions to ask support from NGOs, recruit me in some impossible legal action that in many cases demanded hours of legal research with very little success, or plainly ask me to lend him money to run errands in nearby towns or in Cartagena.

Although this *carta venta* is not recognized by the State as legal title⁸², it bears a remarkable resemblance to a public deed (analyzed in Chapter 4). It shares the same set of techniques to individualize each person, the land and the specific document. Both parties are described in detail, including their name and identification number, and each parties' fingerprints and signatures are also used.

After the parties are identified, the first clause in the agreement establishes the piece of land to be purchased by setting the limits and boundaries with neighboring plots. The second clause sets the price to be paid for the transaction, and the third and fourth clauses establish other rights and entitlements over the plot. There are also a number of stamps included; two on the front of the document and one at the end. All of them attest that the notary has not only verified the identity of both parties by checking the identification number and placing a stamp next to the word "seller" and "buyer" but also that the notary has approved the document by placing the notarial stamp at the end of the document in the right hand corner.

In other words, what this *carta venta* shows is the very similar understanding *campesinos* have of some of the techniques used to talk about land as something we can own. Just as in using a deed, with the *carta venta* there is an effort to individuate persons and land, as well as to recognize the notary as the authority who can validate the authenticity of the parties (See chapter 4). By stamping the document, additional security is provided to the transaction. The sealed *carta venta* accomplishes all of this, like the public deed, as it bears the mark of the state.

⁸² The 21 *campesino* families displaced by violence that now live on this plot of land are currently trying to legalize their possession. They are trying to obtain a legal public deed for the plot with the support of NGO staff members with legal experience

How this document shapes the perception of the law

Until the day I first visited El Sena in June 2009, Juan de Dios and others in El Sena thought of the *carta venta* as the land deed or *la escritura*⁸³, which means "a written paper". From the *campesinos*' point of view, the formal procedure to prepare the document is quite similar to that followed when trying to obtain a deed.

The event is formalized by producing *la escritura*, which includes the names, identification numbers, signatures and fingerprints of the individuals, as in other legal documents (e.g. military card, identification card or letter of displacement). Finally, the individuals go to the authority, in this case, the notary, to formalize the transaction.

For *campesinos*, the stamps found in the *carta venta* do not render the same meaning they do as for the notary. For the notary, this is a private document and they are limited to authenticating each party's signature (as will be described in Chapter 4). *Campesinos*, on the other hand, do not go to the notary to validate the authenticity of their identity (by having the signature authenticated). *Campesinos* come to the notary to turn the private document into a public document and, in this way, validate the transaction before the eyes of the authority. The notary provides the stamps that make this transaction legal to *campesinos*, even if in the eyes of the notary the parties had merely come identify themselves and authenticate their signatures.

⁸³ The visit had been previously arranged at a local NGO office where I had gone to help organize a workshop that tried to map out the situation of land tenure in the region of Montes de María for 11 different associations of displaced *campesinos* in that region. In this first visit to El Sena and after reviewing the paper he handed me over, I gave him the well-known speech about the absence of ownership of the land and that their current legal status was that of possessors. Due to the impossibility of obtaining the legal title from the assumed owner who sold him the parcel and who had left the region several months before, I recommended trying to achieve ownership by applying the adverse possession remedy.

The *carta venta* is *la escritura* for *campesinos*. For them, the notarized *carta venta* means that the procedure is completed and the piece of land is transferred. It is written proof of the transaction, which includes signatures, identification numbers and state stamps. They understand this document as having received official authorization from the State that the transaction is valid. In the words of Juan de Dios, “if something goes wrong, this stamped paper shows that the transaction occurred legally in front of the State.”⁸⁴ As with the deed, in the eyes of *campesinos*, these stamps offer additional security and they provide guaranteed compliance with the agreement.

Making the carta venta the emergence of a New Bureaucrat

The frequent use of stamp papers when important transactions take place amongst *campesinos* indicates an emergence of a different kind of subject in rural settings.

Practices of documentation are most frequent by those *campesinos* who over the years have had constant interaction with institutions. Working within the bureaucratic system set up by NGOs and governmental institutions influences the way some people from within the community behave. Community leaders, and in particular those in charge of dealing with institutions, have had their everyday lives changed tremendously and have led to them adopting a new role within their community.

It is not a surprise that Juan de Dios would only buy land using a paper to avoid possible fraud.⁸⁵ As he put it, the paper includes the seller’s identification number,

⁸⁴ Fieldnotes, July 17, 2009.

⁸⁵ I asked him how he came up with this idea. He told me that someone else had long ago recommended to him that he have a paper drafted in the event he was going to buy land so that the seller could not cheat him later on. He recalled a previous episode where he had bought land and the agreement was

signature and fingerprints, as well as the stamp from the notary to ensure that if anything goes wrong he can locate the seller and attest to the validity of the transaction. The *carta venta* document has a similar meaning for Juan de Dios as it has for the bureaucrat. The document provides Juan de Dios with certainty that, in fact, he has bought the parcel, and in his understanding the document will help him make the seller honor the agreement and make him accountable in the event of any potential damages to his property.

Like Juan de Dios, these *campesino* leaders have acquired a different appreciation for these documents. They are often involved in writing letters to the mayor or other public officials, crafting petitions to ask for humanitarian aid or fulfilling tasks in representation of the community. These institutional proceedings have made the job of the leader a full time commitment and have shaped the way these people interact with institutions and their peers. These *campesino* leaders can be thought of as a new kind of bureaucrat.

Leaders are exposed to a new set of experiences. National and international meetings, conferences, new technologies and new people from the outside are now part of the leaders' everyday lives. These experiences bring radical changes into the leader's life and its position in the family household and the community.

Most leaders are aware of the benefits that come with their new position: the regular trips, visits, conferences and meetings they are invited to attend; the new networks of

reached orally. Juan de Dios paid for the parcel and then a couple of days later the seller tried to back out of the deal. Had it not been for the fact that he had witnesses with him who could give credence to the agreement, he told me, he would have lost the land and the money he paid for it. It was because of the pressure of others who saw the transaction that the seller was forced to honor the agreement.

NGOs staff, governmental officials, and other community leaders they are able to participate in; the hobnobbing with political leaders and international visitors; the possibilities to travel abroad and visit new countries; the preparation and hosting of fieldwork visits to their territory from officials and foreign delegations; the privileged information that as leaders they are able to obtain about new projects or other institutional offers that would benefit their communities; the new knowledge gained that would make it easier to apply to new socio-economic projects and file complaints on behalf of their communities.

This new role allows leaders to hold great power, but it does not come without cost. Their role could have the potential of sparking conflict in the community when these new privileges or information are not shared, or abuses or acts of corruption are committed. Leaders have to hear complaints from their families for not devoting entirely to farming or taking care of their children as they once did; the accusations they often received from their partners for caring more about others than about their children often cause family feuds. Furthermore, these leaders also have to deal with unenthusiastic support for their initiatives by some of the members of the community that often let them down.

The leaders have no choice but to relay on other family members or members of the community the tasks or responsibilities they now are unable to perform. They do not have time to work the land or take care of the family as the others *campesinos* do and they have to depend on the help of others to provide their families with food or nurture their children. These situations cause inconveniences within the family household and sometimes with other members of the organization.

Leaders sometimes have to manage various roles—the familiar and the community

oriented. The concurrent demands of these roles often produce less than optimal results in both fronts. Sometimes leaders are unable to attend meetings and obtain useful information for the community. Other times leaders choose to retire and attend to family duties, able only to participate marginally in the activities of the organization.

Leaders legal knowledge

Leaders are those from the community who become more familiar with legal knowledge, including legal documents, legal proceedings, and knowledge about rights contained in the law or constitution. They later use this knowledge, often mixing its content with some other experiences they have had, to their own advantage or in favor of the community as a whole.

Some officials recognize this new position. A long-time official at the central office at Incoder argues this point,

Some *campesinos* are illiterate that is right! But others know more about laws than any of us. (...) As public officials what we must do is to adjust to the law. But even sometimes when we do not tell them what their rights are, lawsuit nevertheless follow because they have learned what are the rights given by the law, and know to what degree we have followed them. They learn to what degree we have followed the law or when we have failed them”⁸⁶

Leaders have already incorporated this legal knowledge of rights and forms into their own way of behaving, keeping papers or asking for signatures.

⁸⁶ Interview, June 4, 2009.

Sometimes their legalistic mind-set obstructs them of resolving questions that, absent the knowledge they now carry, would be solved by other means easily. *Campesinos'* desire to be part of legality—i.e., sticking to legal forms—sometimes makes it more difficult and complex to solve conflicts in the community, because their legal knowledge sometimes stands in the way of solving some community disputes by non-legal means. However, law-oriented solutions often require a new authority, someone more knowledgeable about the law or versed in a body of knowledge foreign to their own circumstances.

For example, another *campesino* leader from the region of Montes de Maria, at the moment of delivering resources to the community provided by an international NGO, proceeded to stop the whole process when some of the IDs of the community members could not be verified. To be able to receive the materials, the NGO had required each head of family in the community to show their ID to the *campesino* leader and to give their signature upon receiving the materials. A long distance phone call was needed to ask the official how they could proceed with the delivery of materials to some individual members of the community who did not have or forgot to bring their IDs. In this case most members knew each other but it was not until word from the official came through the phone line that the process of delivery of goods could continue. The solution found was to ask the undocumented members to leave their signature and to keep a written record of the members who did not show the IDs for later verification⁸⁷.

Also, an old-time leader, and president of the *Campesinos* Union of Socorro in the Municipality of el Libano refused to accept the change of name of the organization

⁸⁷ Fieldnotes, September 18, 2009.

and altogether rejected to modify the structure of the organization to welcome people of rural background but that lived downtown in Socorro for “a mere technicality” according to other union members. The status of the Association only accepted *campesinos*, meaning those that lived in the rural sites. According to him such change would not be possible because this would change altogether the association’s social reason under the statutes. “The statutes cannot be change.” he often said to other members⁸⁸.

Other campesinos responses, between bureaucratic knowledge and open relationships

However, some of my *campesino* informants in Maria la Baja still express resistance to the changes that have occurred and argue against the use of papers to make transactions over land. One *campesino* explained to me how transactions over land between people in Santafe are arranged, that is, without trying to make a profit by charging interest:

“Here one talks to the person. Around here almost everyone knows each other, nobody is bad, nobody goes against the other, one reaches agreements in a friendly way, without going to an office. One lends or rents without a

⁸⁸ The term Sindicato, or Union, is associated with social movements in the 60 and 70’s of workers that won parcels of land and at the same time some other *campesinos* in the region associate the term with war and violence. Some *campesinos* in the region are very conservative and uphold conservative or traditional values such as landowner-peasant relationships, anti-communist ideas, and old-fashioned catholicism, whereas others are still influenced by the strong presence of the cooperativist movement, the progressive elements of the church, and social and political movements that maintain some identity with the Union movement that impacted that region in the 60 and 70s. For more information on the socio political context of the region of Santander see: León Zamosc, *Agrarian question and the peasant movement in Colombia: struggles of the National Peasant Association, 1967-1981* (Cambridge, England: Cambridge University Press, 1986); also Pierre Raymond, et al., *Hacienda tradicional y aparcería* (Bucaramanga, Santander: Escuela de Historia UIS, 1997).

document because life is already too expensive [...] when the person picks his harvest, the owner of the land knows the person invested time and effort there... so then what happens? If the roles were switched, the landowner knows that that person is not going to have a lot left after the harvest to pay for the land, so the landowner does not expect to be paid interest, either.”⁸⁹

However, one of his buddies, a displaced *campesino* who came from the region of el Carmen de Bolívar and who, unlike the first informant, has never owned land, seems to disagree about the importance of papers. He has lived and worked around the region of Santa Fe for decades and he still does not feel like an owner because of the absence of a paper. All his life he has worked on rented or borrowed land and states that “if you don’t have the written document you have nothing.”⁹⁰

Don Carlos Acevedo, a *campesino* leader from el Libano in Socorro, Santander, is able to reflect on the changes experienced in his own rural district. El Socorro is a region characterized by a well-established institutional presence, one that has yet to be achieved in Montes de María. Carlos provided an account of how things were different in the old days in el Libano, similar to the situation that *campesinos* in María la Baja are faced with today. In a disappointed tone, Carlos states:

“Here, nobody tells you anymore: take this [land] and cultivate there [...] now nobody lends you land for free; [before] we made business by our word, nowadays nobody does that, and now you see all the amount of paperwork one has to do to get a piece of land to work.”⁹¹

⁸⁹ Interview, September 18, 2009.

⁹⁰ Interview, September 10, 2009.

⁹¹ Interview, December 5, 2009.

Establishing new relationships through papers

One thing for certain is that for both Maria la Baja and el Socorro, the image of *campesinos* living in isolation from the rest of society, relating in harmony only to kin and neighbors, and interacting at a local level or understood within a micro society is less and less possible to conjure up. Even in distant rural settings the technology of the stamped document permeates this landscape (see more on this in Chapter 3.)

In the past 20 years, *campesinos* displaced by economic need or violence have become people in circulation whose lives have been characterized by numerous movements and relocations. New rural societies have quickly emerged. There is a constant flow of people in rural settings; new people come to these areas, while other people are forced to leave. Even for those who have never left the countryside, who have been raised and have close family ties in the territory, their landscape has been transformed by the arrival of newcomers in the form of new neighbors, new institutions, new papers (Chapter 3.)

These changes have also represented a change in *campesinos*' mode of life. Those who previously lived on what they grew from the land and whose practices mirrored those of exchange and barter, as typically described by early anthropologists, are now also in need of legal papers in the form of stamped documents, or money.⁹² Money

⁹² Bruno Latour sees money as one of the most “interesting immutable mobiles that has received both too little and too much attention”. He argues that seeing money in relationship with other kinds of inscriptions, or other stamped documents allows drawing new connections and understandings of money that have been overlooked in socio economic theory. “As soon as money starts to circulate through different cultures, it develops a few clear-cut characteristics: it is mobile (once in small pieces), it is immutable (once in metal), it is countable (once it is coined), combinable, and can circulate from the things valued to the center that evaluates and back. Money has received too much attention because it

and other stamped documents are now regarded as important objects of exchange and they are necessary to establish the new relationships that *campesinos* perceive as important in today's world. They need these papers to engage in further transactions, from buying rum or cigarettes at the local kiosks in Matuya and paying for their children's medicines at a drug store, to getting a loan to buy seeds and fertilizer for their crops; papers are primarily needed in the form of money.

Campesinos' contact with the formalization of land ownership through legal means⁹³ comes not only from the idea to guarantee that this relationship with land is recognized and respected by others outside their local context, but mostly, from their effort to partake in these new sets of relationships that money allows. They are interested in having their particular relationship with the land recognized so that it will allow them to obtain valuable new items for themselves.

With stamped papers comes the possibility of improving and further transforming the landscape they live in. As Amadeo Ramos, a *campesino* from Santafe who migrated from the province of Cordoba, says, "being a *campesino* is about knowing your way

has been thought of as something special, deeply inserted in the infrastructure of economies, whereas it is just one of the many immutable mobiles necessary if one place is to exercise power over many other places far apart in space and time." Latour, "Visualisation and Cognition," 28.

⁹³ This association between legal documents and money influences some characteristics of the relationships between *campesinos* and lawyers. *Campesinos* consult a lawyer in order to formalize their relationship with land with the expectation of obtaining greater economic benefits, to exchange the land title for other papers with similar value, such as money. In other words, for *campesinos* the relationship is to submit themselves to someone who knows how to make a document —the paper that will symbolize an economic relationship with the land—. In this analysis, what *campesinos* find is that in order to transform the relationship they have with land into money, they often find themselves needing to pay more money than they intended to in order for them to achieve such a transformation. They have to pay the lawyer's fees and also the fees to have the title recorded, and they incur other expenses as well, from trips to notary authentications. Submitting to such procedures costs *campesinos* precisely the money they lack. *Campesinos* see lawyers as that which can help them make money, and at the same time that which forces them to spend money they lack, often times with no positive return since the formalization process is slow, bureaucratic and troublesome, and in it lawyers often take advantage of *campesinos'* inexperience.

around the countryside.” *Campesinos* invest more of their time in land, their crops and their animals.⁹⁴ Most of their daily thoughts go towards what is grown, how their friend’s harvests are doing, and how they can improve their crops.

Through the technology of the stamped document they are able to materialize some of the energies they put into the countryside. With the technology of the stamped document *campesinos* find the opportunity to make their efforts to transform the landscape seen as something of value, something that, within the system of relationships that privilege ownership and accumulation of wealth, is regarded as something valuable in monetary terms.

Therefore, the stamp document that formalizes land ownership represents money to *campesinos*. Indeed, having a stamped paper had allowed *campesinos* in the past to be eligible to informally obtain credit, or obtain cash by selling part or the whole of their property through *carta ventas*.⁹⁵

Learning legal technical knowledge through violence

Campesinos’ struggles in Colombia to win ownership of land have been long and difficult; gaining legal ownership has not been easy for them. In Montes de Maria and el Socorro, both sites of my rural fieldwork, those *campesinos* who have led the process to win land, and surmounted enormous obstacles to finally obtain a deed, are those that are experts in legal knowledge.

⁹⁴ See Tony Crook, *Anthropological knowledge, secrecy and Bolivip, Papua New Guinea: exchanging skin* (Oxford: Oxford University Press, 2007).

⁹⁵ The *carta venta* in the south part of Colombia was accepted as security to ask for loans during the first half of the twenty century. See the accounts documented by Alfredo Molano, *Selva adentro: una historia oral de la colonización del Guaviare* (Bogotá: Ancora Editores, 1987).

For this group of *campesinos*, owning the land title is regarded as living proof of their fight for land. Their accounts of how they acquired the ownership of their land are rich in anecdotes; over and over again I heard stories of years of fighting, several land invasions and subsequent evictions, tensions with previous landowners and even among community members who did not support the actions taken by those *campesinos* more actively involved in acquiring land, arbitrary detentions and persecutions by the police, countless visits paid to hostile institutions and official authorities, and enormous investments of *campesinos'* own resources and time in procedures and letters.

Those *campesinos* who fight to obtain legal acknowledgment of their land ownership are the ones who get to learn more about the law, and in particular laws pertaining to land ownership; their experience and knowledge of the law comes from fighting against it. They become acquainted with legal procedures, the existence of courts, institutional venues and the process of decision-making. Likewise, they are informed about the timelines in which legal decisions are made, and they acknowledge the importance of and need for lawyers. They assign great importance to certain kinds of papers that other *campesinos* overlook.

Because *campesinos* leaders' lives and energies are invested in this endeavor, once they win title, the person who fought so hard for it is no longer the same. He has not only obtained recognition of his control over and disposition of the land, but he has also learned how to live, behave and interact within the legal system that awards such recognition.

The written document, as well as other techniques the law uses, such as signatures or stamps, are no longer questioned or seen as alien or strange. Such techniques are now taken for granted by *campesino* owners as natural in the world of the law and they not only see themselves as legal owners but find themselves to be a part of this world as well. By participating in such struggles and despite their serious hardships and often complaints about the State's negligence, *campesinos* end up reinforcing their belief in legal documents and in the importance and centrality of the stamped document of the deed in system of legal ownership as a whole.

Not surprisingly, then, *campesinos* who participate more directly in the struggle over land are more acquainted with forms, procedures and papers, and they start to display and reproduce some of these technologies. Just like Juan de Dios, who sees the *carta venta* as a form of guarantee and security for the transaction because the seller and the prices are identified, those who also have had experience with following procedures, writing petitions and filing complaints see the weight of such legal technical devices and find a new appeal in them.

In short, it is through the hardships involved in following the technicalities of the law, learning formal procedures, paying the cost for the transaction, handling of documents, paying trips to meet with officials, and dealing with technicalities found in the document, that *campesinos* can appreciate the role of the law. In the end, it was this group of *campesino* leaders who took legal knowledge and the creation of ownership of land through the stamped paper more seriously.

Points in common of how campesinos and bureaucrats perceive the world of legal technology

Legal technical devices, such as document, stamps and signatures that aim to produce security and stability by solidifying a particular relationship, can produce yet other instabilities and insecurities. Written documents, legal forms and signatures tend to self-reproduce. Even if instability and uncertainty always remain in the interaction between *campesinos* and institutions, the use of and sometimes belief in such legal technologies is constantly reinforced.

In *campesinos*' experience with the formalization of land ownership, this constant instability and uncertainty in the interactions they have with state officials is experienced through documents. Officials dedicate incredible amounts of time replying to petitions written by *campesinos*, and verify documents such as letters of displacement, legal titles, or identification cards. Equally, *campesinos* write letter and petitions to institutions demanding rights and benefits.

Their interactions develop into a cascade of paperwork requested, verified and exchanged to try to secure and make sense of the other's identity, their motives, their demands and their possessions. *Campesinos* usually refer to this increasing amount of paper, demanding rights or fuelling requirements and formalities, as red tape, paperwork, or simply "papeleo."

However, the massive reproduction of these technologies fails to bring a complete sense of the other. Documents never completely bring the desired stability and security, new relationships, new circumstances, new information, or new ways to circumvent the legal requirements appear and new instabilities open up, making it necessary to apply new legal remedies, in form of other technical devices and more

documents. More requirements are generated under the law in order to achieve a new sense of stability in these interactions.

In their interactions with local bureaucracies, *campesinos*' discontent with the authority in failing to provide for them is exacerbated by the increased use of these legal techniques. Whether they approach the State with a belief in its ability to fulfill their wildest fantasies and the papers stand in their way,⁹⁶ or if they make instrumental use of the State and see documents as merely instruments to aid them in gaining recognition of land ownership so that they can start to take part in new exchanges,⁹⁷ in their interactions with the State there is something that gets transferred, something that is gained and something that is lost by *campesinos* in the use of these legal technologies.

The use of such technologies is reinforced while at the same time the *campesino* maintains his critical attitude towards the State authorities. Furthermore, *campesinos*' discontent sometimes increases through the use of these legal technologies.

In a country such as Colombia, torn by violence and inequality, the reliance on legal technologies such as stamped documents, identification cards, and procedural rules is widespread. Photocopies of one's national ID are often requested to start almost any paperwork; at private or public institutions people are frequently asked for their identification number to be allowed entrance, as is the case in Incoder; in everyday, routine interactions such as entering a parking lot, walking on the street at night,

⁹⁶ See Fernando Coronil, *The magical state: nature, money, and modernity in Venezuela* (Chicago: University of Chicago Press, 1997).

⁹⁷ See Teófilo Vásquez et al., *Una vieja guerra en un nuevo contexto: conflicto y territorio en el sur de Colombia* (Bogotá, D.C.: Pontificia Universidad Javeriana, 2011).

travelling on the road, getting a medical prescription or applying for a bank loan or to be included in a governmental project a legal document of identification is always required.

“Malicia indigena” a way to go out of the technology

During the interviews I conducted with *campesinos* and government officials, when explaining to me how their interactions were governed by an increased use of paperwork, signatures and documents, both groups usually made reference to an expression common in the Colombian colloquial language: having “malicia indigena” (indigenous slyness or maliciousness.)

This expression does not exclusively convey having a cunning and deceitful nature; its uses are ambiguous. At the same time, this word suggests coming out ahead of others using any means necessary, and it also implies resourcefulness and creativity in coming out ahead in relationships of domination or where there is an imbalance in the distribution of power, and those in a position of weakness manage to avoid strict forms or rules that are imposed upon them.

In Colombia, this violence and inequality have exacerbated the sense of distrust of others and have produced a constant anxiety to try to discover what the other person’s intentions are. The main thing is to avoid being tricked. Not surprisingly, both *campesinos* and officials use the term “malicia indigena” when referring to how one must act with caution, distrust and disbelief when interacting with each other. It is often by carrying photocopied papers of every single interaction with others or with an institution that one can experience some kind of relief from this constant anxiety.

Through documents, at least temporarily one manages to help bring some sense of identity, security and stability to interactions with others.

Just as Juan de Dios tells me that with a paper there is the name, and fingerprints to identify the seller in case he decides to back out of the deal, officials at Incoder will ask for a long list of documents in order to identify the individual *campesino* applying for a land subsidy: his special condition as an IDP, his family background, and the land he wants to buy. In addition Incoder's Terms of Reference requires the property title of the land, a certificate issued by the Office of registration attesting that the land is free of encumbrances, and a "declaración juramentada" (sworn statements), among other documents in order to try to make sense of the connection between the person's identity, his family, and the quality and status of the land he is planning to obtain with the subsidy, among other things. Officials ask for all of these documents in order to avoid being tricked.

For officials at Incoder, signing a document adjudicating land and approving funds to buy land represent a serious risk. Such actions expose them to being investigated for faulty management in case something goes wrong. As they often expressed to me, they fear being investigated, disciplinarily sanctioned or ultimately sent to jail for failing to adhere to the procedures and laws established to adjudicate land. Excessive documentation is therefore requested in order to avoid making mistakes; even though sometimes officials are not able to make sense of all of this documentation, in a worst-case scenario these documents are seen as "a lifesaver" in the event that staffs are subject to an investigation.

Diana Carolina Barbosa was the third management director for the land adjudication program at Incoder I interviewed in my year and half of visits paid to Incoder's offices in Bogota. She explained to me why there was an increasing number of lawyers hired at the office in comparison to more technical staff required to evaluate the viability of the land projects presented by *campesinos*.

According to her,

“The State has created strong structures to defend itself against the private [applicants]. Corruption is always seen on the side of the public official. It is the public functionary who gets corrupted and starts benefiting the private [applicant]. However, there is also corruption on the side of the private person that attacks the public. So, in this public call to present projects to acquire land, some people pretend to be *campesinos* when they are not. So one must have a really strong team of lawyers to exclude these people from the call. For instance, you know the person is not a *campesino*, but you need to take him out based on such-and-such decree, or on this or that law, so that you can close the issue and move on. [You know who is not a *campesino*] by having very close monitoring. If you go on a verification field trip and the applicant comes out in a car, then you know the person is not a *campesino*. One must have, as we say, indigenous slyness, one has to be looking for who wants to [illegally] slip in.”⁹⁸

Similarly, Luis Mercado, a public official working for over twenty years in the regional office of Incoder in Cartagena, describes the difficulties he saw in the credit system

⁹⁸ Interview, November 24, 2009.

established by Law 160 of 1994 to adjudicate land to *campesinos* as they abused the system set up by the change of regulation. However, he does not blame the lack of control on the new law but on the shortage of personnel, which made it difficult to monitor what was happening on the ground.

According to him, some *campesinos* ended up taking advantage of the new law. Like Mercado, most senior officials I interviewed at Incoder agreed that the credit system established by Law 160 lacked the personnel to supervise and monitor *campesinos*. Mercado states,

“Before there was a system of control and monitoring of the credit awarded because at that time there were enough functionaries. In the Atlantic region there were 5 or 6 teams, and each team had 4 or 5 municipalities. However, all of those personnel have slowly disappeared. [Before], there was a monitoring of parcel by parcel. The State was slowly giving the resources needed according to what each parcel owner was doing. Technical monitoring of the projects controlled the credit given to *campesinos*. Today that is lost. Today resources are made available to *campesinos* and what they do with that money is to go and buy a stereo. They do not invest the money in what they need to do. Before there were controls in that respect [...] The Law [160] said let’s give money to the *campesino* for productive projects and 30% of the price of the land, and *campesinos* said that with that money they were going to buy cattle and start in agriculture, but there was no monitoring, so it became a waste of money. Those guys [*campesinos*] took advantage.”⁹⁹

⁹⁹ Interview, July 28, 2009.

Officials perceive the strict adherence to the law and the use of different legal technologies as defense mechanisms against the abuses committed by private persons. However, a subject like land distribution that sparks so much bitter controversy, not only between state official and *campesinos* but in other spheres in Colombian society, is never settled through the use of these legal technologies. On the contrary, at the same time that there are stories of distrust of *campesinos* (Chapter 3), *campesinos* express their distrust of officials through their hesitation to take part in the use of such technologies designed to settle disputes and bring security and stability to their interactions (when signing a new document, for example.)

Justiniano Moreno, another *campesino* who helped lead the struggle to win the parcel of el Libano for landless *campesinos* in the region of el Socorro, explains the distrust *campesinos* often had when signing documents presented by officials when they were in the process of acquiring land. He refers to how, in a nearby parcel, the *hacendados* (big land owners), with the aid of a local officials, managed to trick *campesinos* and made them sign a letter renouncing their claim to the hacienda parcel to be subdivided, and ended up signing their consent to recognize the *hacendado's* ownership of the parcel:

“Whenever they [*hacendados*] gave you some money they said sign here. There were 3 or 4 signatures that you had to do. So the first paper they read to you was the soft one and the last signature was the one where you were giving up all your rights. That was the document they later sent to Bogota. First it happened in San Roque, and the same case happened later in la Culebra [...] so

we told our workmates here that if a functionary or the boss came they should not sign any papers.”¹⁰⁰

Nevertheless, some people ended up signing letters and the process involved many years in court. Justiniano recalls,

“ The judicial decision [to adjudicate the parcel to *campesinos*] took many years. The case first came to the desk of a judge in Bucaramanga. It stayed there for more than a year and a half. I was taught when I was a boy that I needed to have some *malicia indigena* and not believe the public official. One day we went to pay a visit to the judge together with the Incora regional manager who was helping us. Once at the judge’s office he told me to wait outside while he went to talk to the judge and that later he would tell what he talked about with the judge. I did not believe him at all. When he came out after talking to the judge, I quickly slipped into the judge’s office. I said, ‘Doctor, good afternoon, I am a *campesino* from el Libano; we are in big trouble because we cannot work the land as long as the final decision has not been reached, and other *hacendados* are not giving us jobs anymore. How is the case going?’”¹⁰¹

A joint instrumental critique to “el papeleo”

While some officials see the escalating use of paperwork in their interactions with *campesinos* as inevitable in order to achieve security and stability and control the

¹⁰⁰ Interview, December 8, 2009.

¹⁰¹ Interview, December 8, 2009.

malicious attempts of some dishonest people, other officials see red tape as a malicious device set up by the State.

Marta Soraya Vargas, an evaluator who worked for Incoder in the first public call for projects, was very critical of the whole process; in her words, “ The public call for projects to adjudicate land seems to be designed to not give any land to *campesinos*.” She asserted that the TORs and regulations [were] very strict and that with such regulation very few projects will pass this review. According to her, Incoder will then bypass the law and regulation and pass projects, overlooking some of these requirements in order to avoid failure of the call for projects if only very few were accepted¹⁰².

A similar critique is advanced by *campesinos* and intellectuals who take the effects of these techniques for granted and see them as part of a power struggle that results in discrimination against the weak and poor. They question the legitimacy of a State that asks for many papers but cannot guarantee a strong and efficient presence in these rural areas. As Melanio Parra, a middle-aged *campesino* from the region of Santafe de Icoitea who was involved in the group struggle that won the parcel “Nomenombres” says, in reference to the current state land subsidies, “The state should make this easier for us [...] having to deal with all this paperwork it is clear they don’t want to help the *campesino*.”¹⁰³

¹⁰² Fieldnotes, October 23, 2008.

¹⁰³ Interview, September 18, 2009.



Figure 2. Photo of the Terms of Reference

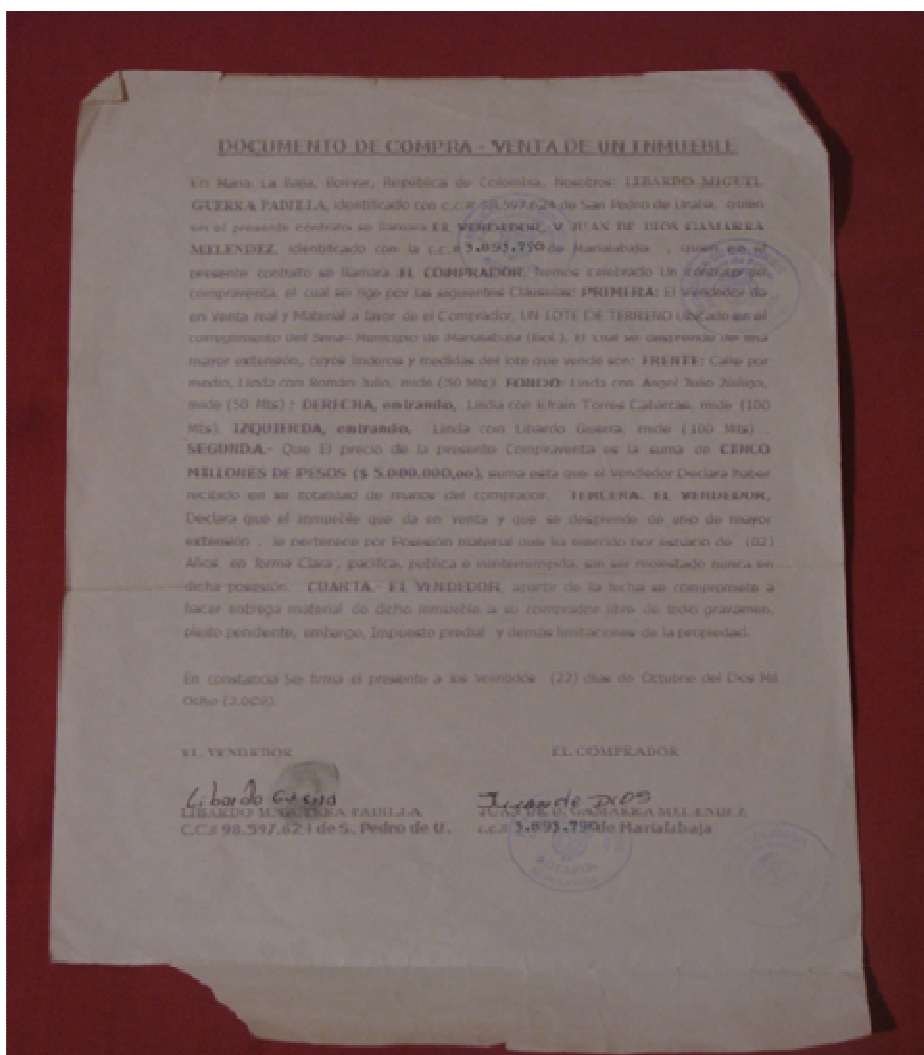


Figure 3. A Carta venta Document

CHAPTER 3

LEGAL CREATION OF A NEW LANDSCAPE IN RURAL COLOMBIA: CONTINUITIES AND DISCONTINUITIES IN THE INTERACTION OF INSTITUTIONS AND *CAMPESINOS* THROUGH LEGAL DOCUMENTS

Introduction

In August 2011 the United Nations Development Programme (UNDP) published its fifth report on Human National Development in Colombia, its central issue being rural society.¹⁰⁴ The report, co-sponsored by six different international agencies including the United States Agency for International Development (USAID), shed light on a major challenge facing all members of society. The long forgotten rural sector, often neglected in favor of its urban counterpart, now inspired new hope. It offered a source of opportunities for economic growth in a globalized world, characterized by a high demand of food, raw materials and natural resources.¹⁰⁵ The UNDP report thus aimed at providing a detailed account of the situation in the Colombian rural sector.

From the outset, the document is clear in its characterization of the rural sector, stating that “(it) is not in itself a synonym of worse life conditions. But in Colombia, making a decent living has become increasingly difficult if one remains in this sector.”¹⁰⁶ The report also asserts that the message sent by Colombian society to rural workers is that

¹⁰⁴ Programa de las Naciones Unidas para el Desarrollo –PNUD, *Colombia rural. Razones para la esperanza*. Informe Nacional de Desarrollo Humano (Bogotá: INDH PNUD, September 2011).

¹⁰⁵ Ibid., 7.

¹⁰⁶ Ibid., 27.

their well-being and progress is ciphered on their moving out of the countryside. This message embodies the urban center view that has characterized the nation's modernization process in the past decades: "This way, the urban nation, in its modernized and burgeoning vein, turned its back on rural society, deepening many of its conflicts or blocking their resolution through institutional channels." The report assures that this has led to "a state of permanent crisis and instability" and it emphasizes that "recognizing this reality is, by far, the first step towards change."¹⁰⁷

After this initial depiction of the rural landscape, the report goes on to present a variety of other widely supported arguments that reaffirm that the rural sector is "in a state of permanent crisis and instability." For instance, one of its most critical aims is to point out the weak role of the government, stating that it has failed to address the various rural conflicts originated in Colombia's modernization process: "In Colombia's case, the rural conflict remains unsolved because the modernization process was truncated –land ownership is still concentrated in the hands of a few, the hierarchical social order has been maintained and access to political power has not been democratized, so it can be affirmed that the rural social scheme has not been transformed."¹⁰⁸

Another one of the main points in the report is that, in Colombia, "the unresolved problem of land ownership was aggravated by the dispute of non-state armed actors over control of the territory and everything included in it (population, resources, identities, sovereignty, and institutions)."¹⁰⁹

¹⁰⁷ Ibid.

¹⁰⁸ Ibid., 55.

¹⁰⁹ Ibid., 54.

Therefore, it is clear that the current land dispossession and forced displacement of rural settlers that characterize the rural conflict must be solved. The government must take action by crafting laws that will achieve “the effective restitution of the lands that were seized from the *campesinos*, and provide substantial relief to the victims of the conflict.” The government’s public policies must also “create favorable conditions for those displaced to return to their original homes and gain socioeconomic stability.”¹¹⁰ According to the UNDP report, these should be the challenges targeted by the recently enacted land restitution and victims law.

The report also makes a point of highlighting the poor recognition of the status of *campesinos* claiming that these “particular subjects are not considered worthy of enforcing their rights and citizenship. This poor appreciation has placed *campesinos* in a situation of vulnerability, given “their lack of recognition as a social group, their inferior valuation in productive activities, especially by small producers, the concentration of land in the hands of a few, their victimization by armed actors, and their political fragmentation.”¹¹¹

In order to solve this situation, the report suggests the promotion and strengthening of *campesinos*’ social organizations. “Building up the basis of *campesinos* and regional organizations” and “promoting the creation of regular dialogue and public debate by *campesinos* on the national scene (like in the case of unions) with the government’s support and recognition”¹¹² are some of the document’s suggestions.

Finally, the report ends with the assurance that, in order to transform the rural reality

¹¹⁰ Ibid., 73.

¹¹¹ Ibid., 64.

¹¹² Ibid., 68.

in Colombia, it is necessary to work towards two main goals: “fighting poverty and solving the rural conflict to develop a stable and sustainable rural society that can participate in the modernization process.”¹¹³ To this end, the report concluded that the State needed to play a more active role in alleviating the problems faced by the rural society, rather than allowing market-oriented provisions to dictate government policies.¹¹⁴

Most of the report’s descriptions and characterizations of the rural sector, as well as its recommendations for possible solutions, are in accordance with a great amount of literature pertaining to the rural conflict in Colombia. The UNDP document provides updated information and elaborates on a few arguments that have long characterized the reading of the rural conflict in Colombia.¹¹⁵ In this chapter, I argue that existing literature on the rural conflict in Colombia, often based on socio-economic studies, privately-funded investigations sponsored by international agencies, or NGO’s human rights reports, has fabricated a standardized view of the rural scene, especially of the areas most neglected by government institutions and far removed from urban centers, where violence and other rural conflicts are most intense. There is an uncontended view of the rural sector that has increasingly become the predominant version of what is happening on the field sites, and that is often echoed by NGO’s, international agencies and scholars.

My claim in this chapter is that this predominant view has raised awareness about some of the most difficult problems facing the rural sector today, but it has also spread

¹¹³ Ibid., 84.

¹¹⁴ Ibid., 85.

¹¹⁵ Perhaps the boldest argument in the report is that, despite the fact that the overall rural population in Colombia has decreased in the last decades, the number of rurally oriented districts and regions still affects 75% of the total population. Ibid., 18.

some of the most common assumptions about this area and its inhabitants. This view therefore overlooks other situations, fails to account for other facts and ignores the ordinary aspects of rural life that, if taken into account, would create a richer, more complex and more accurate image of the rural sector in Colombia.

Nowadays, the image of rural settings as isolated, marginalized, and far removed from developed urban centers becomes increasingly difficult to uphold. In fact, some of the most common artifacts of the modern world, such as documents, have reached these rural spaces. In this chapter, I posit that there is a different reading and construction of the Colombian rural scene if the use and circulation of such artifacts is considered, as is the case of documents.

Just as the UNPD report is one of the several documents that reproduce this predominant image of the rural sector, the use and circulation of other documents in rural settings, which not only convey different meanings but also represent and shape a particular way of understanding the world, can also contribute to create a new rural landscape. My reading not only questions some of the broad statements pertaining to rural Colombia and contained in documents such as this report, but it also provides alternative accounts of rural landscapes that are highly interesting and rich in complexities.

The alternative reading that I propose, aiming to contest some of the arguments of this predominant vision of rural Colombia, will be based on some of the documents that I have come across during my ethnographic work in the region of Montes de Maria. Telling the story behind some of the documents found in this rural setting, and describing the way they are circulated, exchanged or understood by *campesinos*, will

not only allow me to analyze some of the assumptions of this predominant vision of rural Colombia, but it will also enable me to present and recreate a new reality in these rural landscapes.

Entering the Area and Settling in Santafe: Context

My work in Montes de Maria, in the state of Bolivar in the north of Colombia, started in June, 2009. This area is notorious for being one of the most fiercely disputed territories by different armed actors in the northern part of the country. The National Liberation Army (ELN), among other guerrillas, was founded just south of the territory and has been present ever since. Some branches of the Revolutionary Armed Forces of Colombia (Farc) also operate in the region and, in the last two decades, paramilitary groups have proliferated with the sponsorship of large landowners, who saw their properties threatened by the presence of these left-wing guerrillas.

The AUC (United Self-Defense Forces of Colombia), an organization that grouped most of these paramilitary groups, attempted to gain control over these areas and the confrontation with guerrillas rapidly became intense. Because of its location, Montes de Maria is a region that offers strategic benefits to the group controlling it. Its easy access to the sea facilitates the shipment of drugs and arms. It also connects the northern part of the country with the inner cities through the Magdalena River and the West Main highway, which runs between the north and the center of Colombia. Moreover, the region is a strategic corridor linking the north of Colombia with the west, all the way to Venezuela. Finally, its mountainous landscape, with hills and valleys, and its tropical forest, makes Montes de Maria an ideal place for troops to prepare, establish temporary settlements, and organize ambushes on military forces.

In the late 1990's and early 2000's, paramilitary groups hit the region hard. Their aim was to gain control over the territory by directly confronting guerrillas. Their tactics included going into the villages and rural areas and threatening, massacring, torturing, kidnapping, and murdering the civil population, which they considered "guerrillas dressed in civilian clothes." These confrontations led to the displacement of thousands of families to other regions, villages, towns or cities inside and outside the state. In 2000 alone, 56,510 people and 12,546 households were uprooted.¹¹⁶

After president Alvaro Uribe rose to power, the region was declared a "Zone of Consolidation and Rehabilitation" (ZCR) in 2002. His government's strategy consisted in recovering the territories disputed by armed actors. This strategy originated a new dynamic in the confrontations, as government military forces became notably present in the area. However, violence against civilians did not decrease and confrontations between guerrillas, paramilitaries, and armed forces remained brutal. For instance, the community I worked with extensively was displaced in 2002 and again in 2004.

In his first term as president, Uribe also started a demobilization process with paramilitaries, leading to the demobilization of the AUC North Block and its paramilitary branch in the region of Montes de Maria, known as "Heroes of Montes de Maria," on July 14, 2005. After the demobilization, the government took control of the territories won by paramilitaries and, to this day, has managed to keep guerrillas

¹¹⁶ Observatorio de Derechos Humanos y DIH de la Presidencia de la República, *Panorama Actual de Bolívar*, October 2005, 16. Accessed February 1, 2010, http://www.derechoshumanos.gov.co/Observatorio/Publicaciones/documents/2010/Estu_Regionales/bolivar05.pdf.

away, or far from most of the territory. Today, there is a tense peace in the region. Post-conflict programs run by international and national NGO's and government organizations have been implemented in the area. They have outlined projects and programs to provide relief to the victims of the conflict. Some communities have started to settle back in their territories, or they return to work their land but go back to their new homes every evening.

In July, 2009, after a month surveying the area, I decided to conduct research directly with an association of displaced rural *campesinos* known as Asosantafe. This name came from the area where most of its members lived before they were displaced by violence, which is Santafe de Icoatea.

The association was mainly the result of two different groups. The first group was made up of *parceleros* (parcel owners), some of whom had long family ties in Santafe and had lived in the region for over twenty years. The second group consisted of *campesinos* from a nearby region called Carmen de Bolivar. They were *mestizos*, that is to say, they had a mixed ethnic identity, as opposed to the predominantly black population from Santafe de Icoatea. They had initially moved into Santafe in 1998, fleeing the violence in their original territory and settling in the lands that had been left behind by *parceleros*.

Although they came from different areas, both groups were able to work together in the same territory for twelve years. Due to the violence that ravaged the area, both groups moved closer to the main road, near a small village called Matuya, twenty minutes outside the town of Maria la Baja.

After Violence Comes the Document

Violence has certainly changed the landscape in these areas, drastically reshaping the people and their territory. Original settlers have migrated or fled their lands, leaving them vacant, and new settlers have arrived. Crops, cattle, and other farm animals have vanished. The wilderness has taken over the lands for harvesting. And in this new landscape, law and institutions have subtly been introduced through the use and circulation of documents and papers. With the arrival of these new elements, *campesinos* have had to learn how to interact with new actors, different from the ones they had traditionally interacted with in the past, and more importantly, they have had to learn new skills to communicate with these actors and institutions.

Many of my informants attested to this change, explaining how they were exposed to a whole new set of procedures and paperwork that they had never come across in the past. Paper documentation represents a new medium for the spread of information amongst *campesinos*. Documents, together with oral transmission, shape the way that information is transmitted in rural areas. In this new rural landscape, comprising government institutions, NGO's, and other humanitarian organizations, the spread of information is essential for rural communities. Information represents access to services and assistance, and its spread is also important for the interaction between leaders and their communities.

In the rural world, so far away from the epicenter of bureaucracy, documents are kept and stored by *campesinos*. This new experience with papers has allowed for documents to quickly start to piling up into archives community maintain. Papers are accumulated in seminar bags, plastic bags, notebooks and agendas, and all of them are

indiscriminately kept and valued as important possessions. When heavy rains come and water sweeps in through the hut roofs, one of *campesinos*' first concerns is that their papers might become wet (Figure 5).

Documents have increasingly become an important channel for the interaction of officials and *campesinos*. They are seen as a valuable resource to communicate and replicate knowledge. NGO's and government institutions distribute flyers, letter, books, and other material, as well as application forms to be filled out by *campesinos*.

Documents are used for a variety of activities, such as collecting information on communities, controlling which members attend meetings on a regular basis, allowing for information reviews by other officials, or guaranteeing the specific condition or status of an individual (as is the case of certain certificates and letters of displacement.) Documents are a viable resource to perform all these actions, and their formatting provides a certain level of neutrality that is valued by institutions. Printed documents allow for the consistent presentation of messages, as the same documents are transmitted to everyone in the same manner. In addition, they can be widely distributed.

To an illiterate population, these advantages are relative. Documents respond to a different logic than that of "the person in front of me" which has characterized the microcosm where *campesinos* live. Documents require *campesinos* to follow processes with which they are unfamiliar. Speculation and imagination filter in to fill the empty gaps left by the fragmented information they can grasp from documents. In this collective network of gossip, fantasy, and partial information, messages are cobbled together to create a "patchwork" representation of situations. This approach to

documents influences the relationship of *campesinos* with the government and other institutions, as well as their conception of law and their strategies to reply to this unknown world. Their responses are often ambivalent and full of doubt and uncertainty.

Types of documents found:

The national Identification Document is the first official paper that records an individual's procurement of citizenship, and their being registered by government institutions. Many *campesinos* did not have national identification before they were displaced, and were thus left out of all institutional interaction. Moreover, as specified by Law 7 of 1934, the exercise of civil and political rights is tied to proof of identification.

Once displaced, *campesinos* had to learn how to deal with different kinds of papers and documents in order to interact with government institutions in a wide variety of situations. Some examples are military identification cards, children identification cards, SISBEN (subsidized health insurance) identification cards, birth certificates, school attendance certificates, and perhaps most importantly, displacement letters.

Displacement letters are formal documents issued by a local authority known as the *Personería Municipal* (the Colombian equivalent of an American ombudsman). They contain people's declaration on how themselves and their families were forced to flee their place of residency due to violence (Law 387 of 1997.) This declaration makes them and their families eligible for a humanitarian emergency aid package and it

enables them to participate in different socio-economic programs run by various government institutions. (Figure 4)

Displacement letters and *campesinos*' registration in social programs, such as Accion Social, are a powerful example of the importance of documents in the interaction of rural communities with institutions and government officials, the displacement declaration being the cornerstone of said interaction. Displacement letters establish which *campesinos* have been displaced and which have not, and in the world of bureaucracy, this distinction, as well as registration in social programs, is the starting point for the government to build a relationship with the rural community. Displaced *campesinos* are considered as such when a document can certify their displaced status. Rural communities, however, have an ambivalent opinion about displacement letters. Firstly, their tragic experience of being forced to flee their home did not have any particular name at the time it took place. Only afterwards did they learn that they could receive benefits from the government if they did declare themselves "displaced." Several of my informants explained that, only after they heard that the government was offering help for people in their situation, they decided to "meterse a desplazado" (declare themselves "displaced".) To them, reality came first and then the declaration document was an external element whose issuing could provide them with some economic help. For officials, on the contrary, a person exists as "displaced" person when the document says so.

Furthermore, the perception of *campesinos* regarding the issuance of displacement declarations is quite particular. When these rural workers sign a letter declaring their status as displaced individuals, they begin to harbor high expectations of receiving benefits. However, these documents do not guarantee the procurement of benefits, as

shown by experience and analyzed in the following section. More often than not, the expectations of *campesinos* are not met. Several informants complained that, to the day of my investigation, they had not received any help from the government, even though they had declared themselves displaced several years before. In some cases, there is a tendency from *campesinos* to expect too much from the government, viewing the state as a father figure or as a miracle worker, and considering displacement letters as another unfulfilled promise. However, as I will shortly explain, this is not always the case, and displacement letters and other documents can also be a source of new hope for *campesinos*.

Effects and multiple responses to documents

Just as anthropologists have focused on the multiple responses that documents elicit when considering issues such as agency, temporality, and form in their ethnographic work,¹¹⁷ my aim is to trace some of the various -and often ambivalent- responses that documents trigger in *campesinos*. I also intend to explore the interaction of *campesinos* with documents and how this shapes the problems they experience at a local level, their conception of bureaucracy and institutions, and their political consciousness and understanding of law and justice.

a) Documents and forms give place to an interesting variety of reactions by *campesinos*. In some cases, instead of being a source of reassurance, as they can certify a transaction or interaction, they create distrust between the different parties involved (such as local communities, official and NGO's.) The use of documents is associated in a very interesting way with the general lack of trust in rural areas, and

¹¹⁷ See Riles, *Documents*, 22.

more largely with the general lack of trust in Colombia due to the country's history of violence.

Documents are issued by officials and NGO's to guarantee that the individuals applying for benefits do not abuse the system. For instance, before the beneficiaries can receive goods and tools, they must sign a series of forms and provide their ID number.

Nonetheless, forms can sometimes create uneasiness amongst *campesinos*, since they consider that documents do away with trust in relationships —trust that was established by other means. Rather than achieving their common purpose of reassuring the parties involved in a transaction, paper agreements —such as consent forms and powers of attorney- stir up suspicion and uneasiness amongst *campesinos*. In fact, it could be argued that the uneasiness of *campesinos* in this respect comes from experience. According to their stories, believing in institutional promises and following the requirements of paperwork has proven to be more harmful than beneficial. Not surprisingly, some of them have rejected a number of programs which have later brought positive changes to other communities. All in all, their relationship with institutions is generally marked by this ambivalence.

b) On the positive side, documents are a means of formalizing the needs and demands of *campesinos*. For NGO's and public institutions, documents create the temporal and spatial framework that is necessary to interact with these rural communities.

Officials need documents for organizational purposes¹¹⁸, and *campesinos* are equally dependent on them, as documents represent the opportunity to acquire benefits. On a general basis, documents allow for the materialization of various goods, so they are a means to an end that determines people's worldview.

Moreover, *campesinos* are gradually realizing that documents can sometimes elicit more rapid and effective responses from officials and NGO's than their oral requests or demands for action, as is the case of request letters addressed to authorities. However, writing still represents a tremendous effort to *campesinos*, so only under exceptional circumstances do they take the initiative to send letters.

Campesinos are also learning about the difference between promises on papers and the materialization of said promises. Experience has shown them that a gap must be bridged in this respect. However, the gap is often forgotten. As officials and lawmakers know, documents carry hope, so *campesinos* hold on to every detailed form and institutional paper that may represent the possibility of receiving benefits. Similarly, *campesinos* are often too willing to stamp their signature on any document or letter if they are assured this could help them collect money or gain any other profit from institutions.

Documents create a dimension where the expectations of *campesinos* and the promises or intentions -of officials meet. In a way, they harbor the hopes of all parties involved.

¹¹⁸ The formalization of this relationship has legal implications, especially for public institutions but also for private NGO's. In a sense, documents provide a shield or protection for the actions of public officials, as they prove their compliance with the books and codes.

c) Lastly, documents not only represent the possibility of receiving benefits from institutions, but they also take on emotional value for *campesinos*. With time, these records become increasingly valuable and cherished by *campesinos*. During my stay at Maria la Baja, my informants showed me books, maps, or drawings they made during workshops or institutional meetings and they enthusiastically narrated their anecdotes and recollection of their experience with various documents. As Annelise Riles explains in her work “Documents. Artifacts of Modern Knowledge,” documents entail an account of time that bears a fascination in us.¹¹⁹ They bring us closer to a time already experienced. From the time they are created to the time they are displayed or read, the use of documents has allowed for a new experience of time where these two moments (past and present) collapse into one.

This temporal dimension of documents is evident in the emotional meaning they develop for *campesinos* beyond their official content. Documents were handed over to me and sometimes they were copies of the same document without them recognizing the difference. Illiterate *campesinos* distinguished documents according to their colors, by a distinctive sign such as the logo or a number written on them, not by their content.

In the remainder of this chapter, I will elaborate on the multiple -and often ambivalent- responses that documents elicit from *campesinos*, providing examples of this interaction and explaining how a deep look into it can shed light on the reality of *campesinos*, which has so far remained in the dark in the study of the rural landscape of Colombia.

¹¹⁹ See Riles, *Documents*, 18.

Asosantafe: the Paper Organization

An important strategy adopted by governmental institutions to interact with Internally Displaced Persons (IPDs) is to promote associations of displaced *campesinos*. Private and public funds are assigned to these communities when they form legally-constituted associations. The process of starting an association begins with the paperwork that displaced *campesinos* need to fill out for the act of incorporation to take place. From this point, the formal relationship between institutions and *campesino* IDPs associations begins. Since 2001, there have been 12 associations created in the region of Montes de Maria with the support of the Catholic parish of Maria la Baja. The majority of these associations, despite their formal structure, still lack the institutional know-how to properly execute the association according to the law. Rules described in the association statutes, such as: members of the board (president, secretary or vice president), meeting structure, and voters' rights are loosely followed and poorly developed by IDPs. In addition, most associates are not well acquainted with the association's rules. However, the flaws in the association's institutional behavior do not reflect their strong organizational structure. Despite NGOs best efforts to educate IDPs about institutional practices, most of these initiatives fail¹²⁰. Very few of these new roles and practices are actually implemented within the daily life of the community.

¹²⁰ There are two critical problems that help explain this failure. First, there is a definite problem related to how this new knowledge is transmitted to associates. To most *campesinos*, new knowledge is acquired by doing it. They learn how to work the land or many other skills by seeing it done either by their relatives or by other member of the community. A workshop, in which abstract knowledge about rights, duties, or new roles is shared in a classroom setting, does not achieve the same level of impact. If legal knowledge needs to be transmitted to them, it has to be done through action. For example, the actual action of stepping into a governmental office or writing briefs by themselves is internalized more so than theoretical instructions. Workshops about legal rights or responsibilities achieve a similar level of ineffectiveness. This helps to explain why their knowledge about the law so often comes from the bureaucratic procedures and paperwork that mark their everyday lives, rather than from the substantive rights and obligations presented in workshops lead by NGOs.

Fictions and assumptions:

Asosantafe is an association with strong communal organization, close ties between its members, and a set of collective practices that inspire solidarity and cooperation among its members (share labor or paying a day's work in someone else's plot are examples of this communal work).

I initially chose this association for the interesting mix of relationships it offers: regarding people and their ethnicity, their relation with the territory, and their past and present interaction with government officials as well as their experience with government laws. I also wanted to look at how special legal regulation addressed to IDPs and Afro-communities (race affirmative regulation) could highlight tensions or gaps when confronted with a “messy reality” as the one seen in this community. I wanted to portray some of the artificialities and rigidities of the law when defining concepts or placing boundaries to understand the reality of these people.

Despite the fact that my approach to this community was through Asosantafe (the legal association and its members), giving full credibility and weight to this legal association proved to be a troublesome point of entry. Once I got to know the people living and working in the Santafe de Icoatea region, I started to notice more complex situations which the legal association, as a point of entrance, could not address. This community and its heterogeneous characteristics would, over time, show me the artificiality of the legal concept I used to first enter and understand their relationships: the association of displaced *campesinos* called Asosantafe.

Over time I realized there were *campesinos* in the Association that had no connections to this territory, but knew the people from inside or had family ties and, therefore, were included as part of the association. There were also cases where people took part in the association's activities but did not have the "displaced" certification; therefore, they were not registered as formal members in the books and forms but were considered to be part of the same community. There were other people that live in the territory who did not take part of some of the association's activities but were considered part of the community. Others participated in the Association but lived and work in the town and would occasionally come to some meetings. Additionally, others had returned recently to their parcel, so their legal condition as displaced had ceased, but they still participated with the Association as displaced *campesinos*. Similarly, there were people who would come and go into the territory several times. Mobility made it difficult to pin down the limits of the association and the number of members.

I called such phenomena a lack of cognitive closeness as the mobility and conexions displayed among the people in the territory does only allow me to apprehend factions at specific times of this location. The same lack of cognitive closeness I experienced with the idea of legal Association, I latter experienced when trying to set boundaries and limits to the territory, in order to make sense of and analyze their reality (see more on Chapter 4). Drawing boundaries of the territory itself entails a different logic than that used by communities working the land. I was trying to achieve a level of cognitive closeness to reflect upon on a location where *campesinos* have worked and lived without having previously defined the limits (See chapter 5).

These experiences allowed me to reflect upon the fictional unity the legal association presented to me as I tried to understand the people and the territory. The artificiality rendered in the legal form of an association, to which I had initially given full credibility at an epistemological level, began to dim. I started to become aware of a set of subtle differences that make the reality of peoples and territories more complex than I had originally anticipated. From the start, having taken the Association at face value proved what a powerful force a legal fiction such as the Association can exercise in the researcher's own understanding.

The legal association may be thought of as a legal technical device that is used in order to understand something that does not allow itself to be understood in an orderly and logical fashion. It is a shortcut to easily comprehend a world beyond our ontological capabilities. After numerous meetings with members of the association, the only space where I could see this Association thoroughly existent was in the papers that gave birth to it and in the imagination of bureaucrats and NGO workers that came into contact with the community under the framework of institutional interaction with the Association as such and how often they were handling documents like the Association's acts of incorporation, attendance sheets and the like.

Constituting an Association of displaced *campesinos* can be seen by writers of human development reports, as the report introduced early in the chapter, as a powerful instrument for promoting social cohesion amongst *campesinos*.¹²¹ For *campesinos* the

¹²¹ Law 387 de 1997 and Decree 250 de 2005 are active in promoting the creation of new associations of displaced *campesinos* and other impoverished communities in order to access and participate in different socio economic programs run by the government. See for example the study of Cesar Rodriguez, "Solidarity Economics, Globalization and the Struggle for Social Inclusion: A Study of the Cooperatives of Informal Garbage Pickers in Colombia" in *Another Production is Possible*, ed. Boaventura de Sousa Santos (London: Verso, 2009).

Association could be understood is another medium or instrument that helps them to receive benefits, but that not necessarily accounts for social cohesion or that does not necessarily represent the structures and constructions of communal ties of the *campesino* group that other disciplines have illustrated for decades such as Anthropology.

In fact, *campesinos campesinos* also give an instrumental use to these associations. They have learnt that constituting an association is a useful way to become eligible to receive more benefits and some of them manage to sign in for more than one association at a time. When I asked who was part of Asosantafe, they often considered an individual a member part of the Association if that person had previously received help from an organization that had worked with Asosantafe. In general, the first consideration for who received classification as a member was if external help had been received. Coincidentally, the people who have received help were those that most often appeared in the different lists of governmental and NGOs institutions.

State and NGO Forms

In this territory, State and NGOs often act in complementing or substituting one another to provide support for some displaced *campesinos* needs. This complementarity is often experienced in a variety of ways. NGOs directly provide benefits to communities or they do it through institutional agreements with the State institutions. Other times NGOs replaced the role of the State as a provider offering projects for harvesting, shelter, and education, among others. *Campesinos* acknowledge this fact and often complain that in there “the State has not provided

them with anything” and that it was thanks to specific persons and organizations that they had received benefits. (Figure 6)

Most governmental and non-governmental organizations that develop work with *campesino* communities due to its institutional mission use forms to keep track of who attends conferences, meetings or apply for benefits. This is done for a different number of reasons and helps incorporate *campesinos* into “institutionalized” behavior. Forms allow them to keep an account of how many members of the community are at the meeting, or they help obtain other valuable information from the community that the organization is trying to assist. Also the information collected in forms is used in filling out reports or grant applications to collect funding from national and international agencies to support different programs. These forms will give the organization a real account on how many people participate in their meeting, and therefore are entailed to receive benefits. It is crucial that people’s names or signatures are included as those items that give the family the right to be counted in when benefits arrive.

Forms do not vary greatly in style. In contrast with the State forms, however, NGO forms more frequently deliver benefits to *campesinos* in the short term. The experience *campesinos* have with governmental organizations is often more chaotic; in the interaction with governmental institutions, sometimes there is no possibility of payback in the short term. Either way, by participating in these practices of form filling and the creation of a new document *campesinos* also have become part of a bureaucracy (see chapter 2.)¹²²

¹²² Letters are answer with standard forms for everyone. Hundreds of applications are reviewed and filed every day. In an NGO or a State institution the same process occurs in terms of the des personification of the claim through the use of forms.

The moment of exchange in the form: signatures for benefits

Campesinos are easily persuaded to sign any form that will provide them with material benefit. There is a new role that they are starting to become skillful at: form-filling. As with the judicial decision I will explain in detail later, with a signature there is a world of expectations that opens up to them. As much as the form document becomes an instrument to receive a particular benefit, it also becomes a hope bearer of what it is that *campesinos* are going to receive.

The day these expectations are met is the day these benefits are going to be received, and it is as important to be on time to sign up for the new forms that arrive on that day. That day is the materialization of the forms filled out by *campesinos*. It is the moment of happening, the moment when benefits have finally arrived¹²³. It is the moment of consolidation, when the paper becomes a reality seen.

Powerful images interrupt the daily routine of the community on the day of the exchange. The image of trucks with institutional logos loaded with goods. Photographs of members of the organization delivering the goods to the community are taken. There are new people around. New officials, and with them, new forms *campesinos* need to fill out to receive the benefit. The community leader receives a

¹²³ All kinds of goods get distributed: hoses, nails, three kinds of pikes, ropes, among other things. The head official reviews the standard list of tools and goods to be delivered and suggest how they should be used. What the official does not know is that the conditions of the community's work will not allow *campesinos* to use all tools as suggested. For example, some tools provided to build a collective stand to irrigate crops are not useful given the fact most plots are scattered in an extensive territory. Regardless of this, *campesinos* receive them happily." One has to receive everything they give you", despite the fact it will be later piled up in the corner. The logic underneath is to receive as much as institutions can give. Later *campesinos* will see how to benefit from it. Everything would be put to good use.

list of names and stamps his signature on the paper that accounts for the delivery, and then repeats the procedure with each member of the association included in the list. The delivery list needs to be completed, regardless of whether the person knows how to sign or not. Once again the importance of the document in the process of delivering goods is central. The form with the name of the people and the space to collect their signature has a central role and deploys a tremendous power in making the event happen.

The power of these documents lays in the expectation of becoming real for *campesinos*. The process of red taping, attending meetings and showing up on time for the delivery of goods, has paid off. The benefit promised in the papers is materialized at last helping to keep the expectations of *campesinos* in certain documents alive.

For *campesinos*, filling out forms is one part of a relationship of exchange taking place. For instance, you receive visits, attend the meetings and later you receive the benefits organizations provide. This view reveals a peculiar understanding from *campesinos* about what visits, workshops and conferences are for, and who would ultimately benefit from them. In *campesinos* view there is a difference between seeing the content of a workshops as a direct benefit to them, and the benefits they get in exchange to participate from meetings or providing information completing forms, such as, food, tools or tiles.

Additionally, to *campesinos*, what happens after their name and other information is collected in forms, become a mystery difficult to unravel. *Campesinos* wonder and worry about it, as information about them is collected in documents that later are out of their control. In reference to how they receive benefits from NGOs, one of my

informants says “they have all the information about us over there, in their office, they probably know a lot more about us than we think”. They also relate with curiosity and wonder how when they go to a governmental offices it is amazing how with “one push of a keyboard, they already know who you are, if you have had any trouble with the law, or something like that. It is all on that screen”¹²⁴. The interaction between institutions and *campesinos* is full of subtleties as it is quite changeable according to how promises and projects develop. Therefore, it allows *campesinos* to speculate on what use all of this information could have and whether such information could ever turn against them. *Campesinos* know too well, that in the world of form-filling and institutional documentation about them, they are giving away something of their own in exchange for tools or some other benefit.

Fictions and assumptions:

In this interaction between officials and *campesinos*, the question of how much of a mutual reciprocity of benefits is to be understood in these relationships is puzzling. Where does one draw the line between assistencialism and exchange in this interaction between institutions and *campesinos*?

Institutional assistance to impoverished communities is seen as help provided to people at a disadvantage. Often this situation is seen as a one-way interaction where goods and services are provided by different organizations for free and when the possibility of a return on behalf of the community is not expected. Critics say these actions lead to assistencialism that is promoted by organizations. However, assistencialism must be closely scrutinized.

¹²⁴ Fieldnotes, September 17, 2009.

All along this interaction takes place in a situation of inequality. Unbalance. Institutions appear after the communities have gone through a period violence. They arrived to help, to provide the community with goods and services that *campesinos* lost or did not have before. In this scenario, a number of different organizations are on the platter to choose from. They offer their services to the community. There is constant flow of offers from organizations in places like Montes de Maria: a workshop about Fundamental Rights, a meeting with the IOM (International Organization for Migration), or an event to share the experience of communal leaders sponsored by the local church. Some of these organizations justify their existence by offering goods and services to the community. They have or have taken over the role of providing education, health, employment and other alternatives to these communities.

In these communities exchange exists as a path of bonding the community together. *Campesinos* give each other presents every day. There is continuous exchange, for instance: a bucket of fish, and later that person in turn receives a quart of oil. In a setting with so little material wealth, community solidarity is part of their lives. There is not a precise account of what they receive in return, but there is constant exchange. They come and go from each other's houses lending and borrowing different things. What they have in abundance they share with generosity, what they lack, they borrow from someone else.

Moreover, the logic of traditionally working the land develops a different sense regarding material goods and the constant exchange that escapes some of the premises of maximizing benefit and accumulating wealth. In the realm of nature, *campesinos* are often used to receiving abundantly from the land where they work, when other

times they received little. In their relationship with nature there is not a direct correlation of what they receive in return. Land has always provided for the survival of this community. By their close contact with the land and nature they are aware of the sharing processes and linkages of nature itself. Sometimes *campesinos* see themselves participating in some part of these processes and in this way *campesinos'* sharing practices escape the boundaries of capitalism. This sharing process happens in everyday life of the community, standing for a different understanding of exchange.

Therefore, although outsiders may perceive this as an act of assistantship where NGOs provide services to people who apparently do nothing in return, they may fail to see this interaction of constant exchange taking place in the community. In the logic of these communities even if there is no reciprocity in what they receive, they are aware that there is an exchange taking place through the filling out of forms. Many times when asked why NGOs provided them with services and goods with apparently nothing done in return, people disagreed and would understand them as retributions for taking part in these institutional activities. Organizations provided goods in exchange for assistance to the workshops they offered. People who would participate and attend the meetings would be qualified to receive the benefits. Attendance at workshops were often not seen as a service to them but rather as a service that *campesinos* were providing to organizations. Most of them saw the signing of forms as a way of solidifying this exchange. For instance, by signing the assistance list form, *campesinos* would receive a benefit.

Assistencialism takes place when there is a failure to account for an exchange, or when the retribution in that exchange is not seen. Assistencialism is as much a return in the exchange of goods or services as a mental setting that leads officials to think

they know what is best for these communities. Assistencialism come when no mutual exchange of knowledge is perceived, and one perspective dominates the field and tells the other what to do. When such exchange of knowledge is not perceived it is likely someone will decide unanimously what is best and does it without considering the community. On the side of *campesinos*, assistencialism also happens when they are unable to realize the exchange taking place; when this exchange is lost and the community fails to see the repercussion of what they are leaving out. In these cases, assistencialism is perceived and understood by *campesinos* as numbness. This is when the benefits and aids make *campesinos* lazy according to their own terms. They do not work as hard, they become lazy expecting what they can receive. The kind of laziness *campesinos* regret the most is for not demanding more and for being complacent with whatever comes.

Escaping the forms closeness

Campesinos understand how official and NGO workers utilize forms and other written documents to characterize and familiarize themselves with their world. They have developed different strategies to respond and resist this form of knowledge. There exists a world outside this arena of forms and documents. This situation represents a unique situation that can be controlled and manipulated by *campesinos*.

There is an underlying behavior of trying to get as much as you can from agencies and organizations. *Campesinos* assume a pragmatic position towards the world made of forms and documents. Therefore, *campesinos* exploit the gaps left by the use of these forms and documents by official and NGO workers. *Campesinos* are well aware of the

limits of this world of documentation and the partial knowledge written documents create of the community.

For example, some projects only allow and/or require the listing of one family member to account for the entire family. In such cases, it is found that the spouse or other relatives, who should not have their name listed separately, do have their names listed separately on the lists with a different last name. Knowing that officials are guided by the names included on these forms, *campesinos* sign in as many family members they can in order to collect more benefits. When applying for projects, they also try to include more women than men because they know that that will earn a higher score when the projects are evaluated. Even if the single mother head of a family unit is intended by the law to give priority to this vulnerable group, married women are signed in the lists as single mothers. *Campesinos* have noticed, as one of my sources said, that a project in general is more likely to succeed if the number of women is higher than men. When faced with forms such as the attendance sheet, given the deep knowledge of each member of the association, they allow children or other relatives to represent people and sign the list in their name. Children know their parents' identification numbers.

In some cases, when there is a collective benefit that needs to be divide they decide, fairly quickly and with limited disagreement, who are the people in most need in order to distribute the benefit among them first. It is rare to exclude people from meetings or from participating in the benefits given to the association if they do not show interest or compromise with the association, having the means to participate. In general, given the deep understanding community members have of each other, there is close control

being exercised by members on how to divide the benefits among the group as a whole.

The ““fallo””- A Judicial Decision

The story of the ““fallo”” will help me describe one particular experience *campesinos* in Santa fe de Icoitea have had with law. The ““fallo””, a judicial decision expected to grant economic benefit to *campesinos* that had suffered from a violation to their fundamental rights, reveals how complex and rich the experience *campesinos* can have with the law contained in papers and in their interaction with Institutions is. In other words, the ““fallo”” provides a particular account of the experience of *campesinos* in their search for justice and law.

Campesinos in the region of Montes de Maria decided to sue the State. They demanded from Accion Social to receive the Humanitarian Emergency relief they were entitled to under Law 387 Article 15. This law provides for three months (extensive to 6) of Government support for displaced persons after the displacement occurs. The monetary compensation helps the person or family with food, shelter and medicines. Despite the fact that this aid is intended to help displaced *campesinos* on an early stage of their displacement, in this and other regions *campesinos* still have not received it despite of having applied for relief from the government for years after they were kicked out of their land. In case they win the lawsuit *campesinos* are rewarded with a monetary relief of 1 million pesos (500USD) per family as Humanitarian relief. This amount is deposited in a bank and *campesinos* receive a debit card to withdraw the money.

Families in this region were persuaded by a private attorney to sign letters of authorization on his behalf to bring the case. They also signed letters addressed to Accion Social demanding their rights to receive humanitarian relief, in other to start with the law suit. These standard pre-arranged letters (Figure 7) were signed individually by each head of the household along with an initial payment for the lawyer's fees for his services.

This legal action immediately triggered the belief in the community that soon they were going to receive an important amount of money to improve their living standard. “Tenemos derecho a un poco de cosas, 5 millones de pesos por lo menos” (We are entitled to a lot of things, at least to 5 million pesos) they often said.¹²⁵ During the first stages of the case they were willing to give more money to undertake additional procedures the lawyer said he needed to do, or just as a way of contributing to his work. However, the initial expectations the lawsuit sparked among community members to receive the benefit died away within a few months. *Campesinos* were losing their optimism, leading to anger and discontent with State institutions involved and with their attorney.

By the time I entered the community, going to pick up the ““fallo”” to Cartagena was one of the hot topics of conversation among members of the community. Some had already gone to collect their decision. The attorney after a few months had lost interest in their cases and had not bother to inform the community that the lawsuits had been decided. He did not bother to notify each client of the outcome of the decision. Therefore *campesinos* were required to appear in Court to pick up the ““fallo”” for themselves.

¹²⁵ Fieldnotes, September 10, 2009.

To go and pick up the “fallo” by themselves was a job that not many were willing to undertake. It required them to enter into a world that *campesinos* do not feel they belong to, a place where they are not in control of their actions and do as they are told. The Courthouse was a place where they did not know what to do, how to interact, or where often they felt looked down upon.¹²⁶

When some *campesinos* decided to collect their decisions, news spread among community members and led to all kinds of speculations. Some said that there were people who had won the cases, as they had effectively received some monetary benefit deposited in their bank accounts. Others said that they had no way of knowing because after going to collect the decision they were told by official at the court that the papers were lost in the court house, or that the cases were already archived and sent to the Constitutional Court in Bogota that take in all these cases. Others thought they lost the case because they did not receive any checks or money deposit.

¹²⁶ For peasants entering the Courthouse feels like entering a different world. They lack the vocabulary and the forms to talk to officials. Technical terms such as, the notification, the edict, or the incident, sound odd to them. All formalities found in this location talks to them of a kind of power outside their control. It is the power of knowing how to behave, how to speak, how to dress, how to look around that they lack of. All kind of prejudices official have about *campesinos* are trigger when *campesinos* walk in the scene. *Campesinos* talk plainly and unsophisticated, they dress casual, with jeans and shirt. They are thought to be ignorant or rude. Often court officials see them as a nuisance to deal with, or officials belittle *campesinos* and see them with pity.

Legal knowledge is transformed from the written rules on: how to submit a demand, they way of notifying it, or how to register a claim, into rules by the way it is done by the official at the courthouse. Officials are experts in this type of law. Lawyers very often learn this law from court official not from books. The experience of lawyers is that you learn the “real law” in the Courthouse, by doing it: talking to officials, or filing a petition.

Additionally, the building of the Courthouse itself looks different from the surrounding architecture. Inside, the setting in display (piles of documents stored in offices, stacks of papers and folders) tells that something demanding hard work, containing great force is happening inside. *Campesinos* see how official are deeply attached to these forms and documents.

People also speculated that the attorney had claimed the benefit without telling them or that he had abandoned the cases because they were not successful. *Campesinos* said the attorney had also persuaded other communities in the region to file lawsuits against Accion Social with the same poor results. Others member in the community just saw how the lawyer, also an evangelical pastor, was using the lawsuit to collect funds for his church.

Other rumors said that if the person wanted to have access to the decision they had to pay some money to the court's secretary to get the decision. *Campesinos* also mentioned how some of them believed Accion Social had decided to reject all decisions arguing that it did not have the money to pay the relief. Others *campesinos* speculated on how Accion Social proved to the court it had given *campesinos* the benefit by presenting to the judge documents signed by them as proof of the help received. These documents, they argued, did not correspond to the amount expected as humanitarian aid. An informant narrated to me how one of the community leaders, that had gone to collect some of the “fallo”s”, was stopped and briefly detained by police when trying to take “fallo”s” out from the court without authorization.

Explaining the case to me *campesinos* often confused institutions and terms. It was unclear to them how the money was delivered in case they won the case, or what percent the lawyer charged for his legal services, not to mention that they did not have any idea of the steps or procedures followed by the court before issuing their a decision. They only thing they all knew was they were suing the State to collect money provided for humanitarian aid.

Their claim for justice was clear and well established however, the technical language and procedure of the law felt at odds to them. Law that in other spaces was thought to produce certainty and provide an organized view of the world (see chapter 4) in this context triggered a situation of confusion for *campesinos* dealing with it. For them it was not only hard to finally have access to their decisions, but to make sense of how to proceed before the Court. Gossips, speculations, uncertainty came out from a series of mixed messages making their experience with the law all the more complex and troublesome.

Uncertainty constitutes an important experience of the law found in papers for *campesinos* but also in some circumstances having the paper helps alleviate this feeling. *Campesinos* acknowledged that this experience of the ““fallo”” is as much a quest for money as a quest for information and certainty in the outcome. All of them whether they had placed or not high expectations in the outcome or not wanted to have their paper decision in hand. They wanted to have the physical proof of whether the ““fallo”” had turned out to be good or bad.

This time to access to the law was at the same time overcome the law. *Campesinos* had to deal with law’s inherent formalities of words and forms inside the Court in order to have access to the decision. However, this decision is not law or justice to them, it would only inform them whether or not their demands were met.

The experience of law as paperwork

Campesinos substantive claim for justice, “that what we are entitled to”, departs from what *campesinos* experienced as law. Procedures and paperwork take the central role

in this experience of the law. This is the kind of law *campesinos* are most familiar with. “Papeleo” or “papeleria” (paperwork) are the words by which *campesinos* refer to when talking about their experience with law.

From the *campesinos*’ perspective there is no direct link between “paperwork” and the idea of law as that to which “they are entitled to.”¹²⁷ Formalities are seen as independent and distant from substantive debates about rights or obligations. The fact that they have rights as displaced persons (IDPs) is settled beyond question for them - perhaps thanks to the instruction received by NGOs. However, the space where rights debates take place belongs to a different realm of law, that of which *campesinos* often see. For them, such substantive debates might be left to courts, activist and lawyers to deal with. In this context substantive rights are disregarded and paperwork becomes what *campesinos* are able to see about law.

For *campesinos* there is no chance to contest with this paperwork experience of the law. Document, forms and procedures are there to be followed. Any divergence to the sense of justice understood as “that what we are entitled”, a serious challenge to the law, is out of place in the realm of forms, documents and procedures. Only an intermediary, that one who is familiar with the language and the technical knowledge used to craft these documents, has a space to bring back the *campesino*’s claim of that “what we are entitled to”. Often this role is reserved for lawyers, judges and legal professionals (see more on Chapter 4 and 5.)

¹²⁷ What I am set up here to do should not be mistaken with the classic division between Law in the books and Law in action.

Campesinos are marginalized from this space of contention of the law; they are not a part of it. Rather, they are relegated to the paperwork experience of the law. The lives of *campesinos*, their names, their experiences and their pain all become re-interpreted by these intermediaries, by those who make the claim and advocate in their name. Intermediaries formalize the claim and *campesinos'* own words become written statements in formal letter or judicial decisions like the “fallo”.

For *campesinos* the liveliest realm for interaction with institutions becomes the realm of procedures and paperwork. It is in the close and frequent contact with paperwork and procedure where *campesinos* obtain knowledge on what law is. Due to this familiarity, it is this paperwork quality of law that *campesinos* know and argue about. When I asked some of them about what was wrong with the law pertaining to guarantee land ownership, some of them complained about the excess of papers, and forms that they were required to deal with. In words of an informant: “They (the government) should try to make (all these procedures) a little bit less of a hassle for us. They set up all these requirements purposely so that we cannot access the benefits”.

You won the “fallo” you “hit the jackpot”

The “fallo” or decision received by *campesinos* followed the same formal disposition repeatedly. Not only the formal style of the decision (Facts, Procedural Actions, Considerations, Disposition). Also, a number of decisions collected shows there are other similar rules followed. For example, all the lawsuits were framed as an “Accion de Tutela” a writ of protection of fundamental rights to Internally Displaced Persons. The decisions substantiate different life experiences by only including some relevant facts (i.e., place and date of displacement) or examining similar documentary evidence

(i.e., letter of displacement or documentation provided by Accion Social). Very often a word document of a previous decision is used as the pattern. Court officials copy and paste new names into previous decisions that had dealt with similar issues in the past, adapting the form of the decision to the new case. The decision is crafted by stitching paragraphs from previous decisions into the new one. Finally, all decisions included a part of the precedent established by the Constitutional Court when addressing internally displaced people. Decisions repeat over and over the court jurisprudence about the State obligations and rights that are granted to protect this group of IDPs.

Legal experts recreate the juridical field by the use and reiteration of words¹²⁸ and documents. Lawyers and judges produce a body of knowledge based in accounts of other people's reality condensed in written documents such as the "fallo."¹²⁹ However, not surprisingly *campesinos* are not reading what the courts write.

On one hand, after receiving the decision, *campesinos* want to know if they have won or, in their words, if the decision turns up to be "good" or "bad". Those whose outcome is positive do not bother to find out what arguments helped to persuade the Court. On the other hand, most of them wanted to know why they have received a negative outcome, they wanted to dig into the reasons of the court. The finding was that in the cases of IDP, where there is substantive amount of jurisprudence supporting the constitutional State's obligation to protect IDP and restitute them for the violation of their rights, the reasons for the decision to come out in a negative way had to do with paperwork submitted to the Court.

¹²⁸ Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field" *Hastings Law Journal* 38 (1987): 805–855.

¹²⁹ Bruno Latour, *The making of law: an ethnography of the Conseil d'Etat* (Cambridge, UK: Polity, 2010).

In this case *campesinos* learned that Accion Social had showed documentary evidence proving they had previously received benefits from the State, and also that some of these families were not included in Accion Social's database and therefore were not registered as IDPs. Sometimes *campesinos* admitted to having submitted a signature or received a document to which they could not verify the validity of or its authenticity and immediately assumed those were the documents presented before the court by Accion Social to dismiss the lawsuit. Paperwork, as a constitutive part of the court's job, came again between *campesinos* and their demands to the State.

Then when the outcome is "bad" *Campesinos* complain about the injustice being committed to them in the decision; how they lost everything they had because of the violence. There is indignation among *campesinos* for what happened to them, something the official letters and documents cannot record. There is also frustration of seeing how little they have achieved as IDPs and in bringing a lawsuit against the State. All things considered, there is an overwhelming feeling of helplessness towards the paperwork experience of the law.

Therefore, for *Campesinos* the experience of the "fallo" is often compared to the experience of "playing a lottery". According to one of my informants, all in their community know each other well. All of them find themselves in the same condition and had endured the same circumstances of violence. There is no other way except from luck how they can help explain the reason why some people received the economic benefits allocated by the "fallo" and others did not. "It is just luck" some said, "you have to have faith in that the "fallo" is going to come out good".

The substantive rights discourse developed by lawyers, NGOs and judges is not relevant in this respect. In *campesinos* own words: “You hit the jackpot”, when the outcome of the “fallo” turns out to be positive, just as if you had won the price in a lottery. In fact, the price is the same: winning the decision is winning an amount of money. Considering how they understand the judicial decision to operate, as an act of fortune, they have no attachment to the ideas about rights being discussed in the “fallo.” Moreover, they have no control or say in the process defined in the issuance of the decision.

The judicial decision made in the court, where the “fallos” are issued, allows for bureaucrats to recreate in their minds an idea of law, fundamental rights, or legal procedure, very different to the idea of law *campesinos* draw from these practices of bringing a lawsuit and the experience of the law through handling paperwork. In the “fallo” discussions of due process or IDP rights do not speak to *campesinos*. They know well that the “fallo” end result is not about justice it is about being lucky enough to win the prize.

Conclusion

The main purpose of this chapter is to provide the reader with a different account of the Colombian rural sector today, or at least to contest the commonly assumed mental image of these rural areas where violence has hit the hardest as isolated and outpaced from modernity. My aim is to read the rural context, and in particular the interaction of bureaucrats at governmental and non-governmental institutions and rural peasants in Colombia, from the perspective of these documents that, as modern artifacts, have a very active and important role in this rural setting.

This chapter tries to depart from one of the main ideas found in Socio-Economic analysis on rural poverty in Colombia that explains the current rural conflict as a consequence of both the internal conflict over control of the territory by armed actors and the inefficiency of legal regulations advanced by the State to offer consistent solutions to the problems facing the rural sector, such as land tenure disputes.¹³⁰

This trend of Socio-Economic analysis points to the lack of commitment from the state to provide disfranchised rural inhabitants with policies and laws that will contribute to include them in modern society. Thus, this literature often proposes remedies from the bottom up, such as strengthening *campesinos*' local organizations, empowering rural communities to fight for their fundamental rights (as minorities, IDP's, afro-descendants, and women,), or openly criticizing some institutional approaches for their lack of horizontality in their humanitarian intervention within these communities, characterizing such interaction as "assistentialism."

However, as shown by some of the evidence collected in my work, such remedies also presuppose a ready-made conception of reality in rural areas that ignores other relevant details, sometimes ambiguous or contradictory. These observations and new connections drawn from the situation in rural areas are also influential for the creation of a more complete and complex landscape of the rural sector, which will ultimately encourage the development of new and creative remedies to improve the wellbeing of rural inhabitants.

¹³⁰ See for example: Absalón Machado, *La cuestión Agraria En Colombia a Fines Del Milenio* (Bogotá: El Ancora Editores, 1998); also Dario Fajardo, *Tierra, poder politico y reforma agraria y rural*. Cuadernos Tierra y Justicia. No 1. (Bogota: Ed. ILSA, 2002).

Moreover, even though socio-economic analysis has been very prolific in its attempts to understand the situation in rural areas, it has also assumed law and society as separate entities, or society as a separate ontological domain.¹³¹ Thus socio-economic literature commonly shows law as an instrument by which society can be deterred, controlled or influenced.

The approach used in this chapter stands in clear contrast to this conception of law. It intends to perceive law as it is known by the actors involved in interactions. To understand how the knowledge of bureaucrats and rural communities is created, I have made a thorough analysis of some of the documents produced by NGO's and government officials and *campesinos'* response to them. My view of these artifacts follows the idea that knowledge is produced by the interaction of actors, actions, forms of speech, and material objects. Under this approach, legal knowledge is seen as the product or effect of the interaction of certain kinds of agency (human and non-human), certain kinds of aesthetic practices, certain instruments, and certain kinds of expertise.¹³²

Therefore, documents in this chapter are not only considered in relation to their instrumental use, but also as "ends in themselves" in terms of how they produce new realities in this rural context. They are seen as objects worth theorizing about. Lastly, I have tried to conceptualize documents as epistemological and material objects but also as agents.¹³³ Overall, these documents prescribe a particular way of doing or conceiving things, a particular arrangement of actions or ideas that responds to a need

¹³¹ Ron Levi and Mariana Valverde, "Studying Law by Association," 806.

¹³² Riles, *Documents*.

¹³³ Riles, *Collateral Knowledge*.

for understanding, justifying or maintaining the perceived coherence and stability of the system.

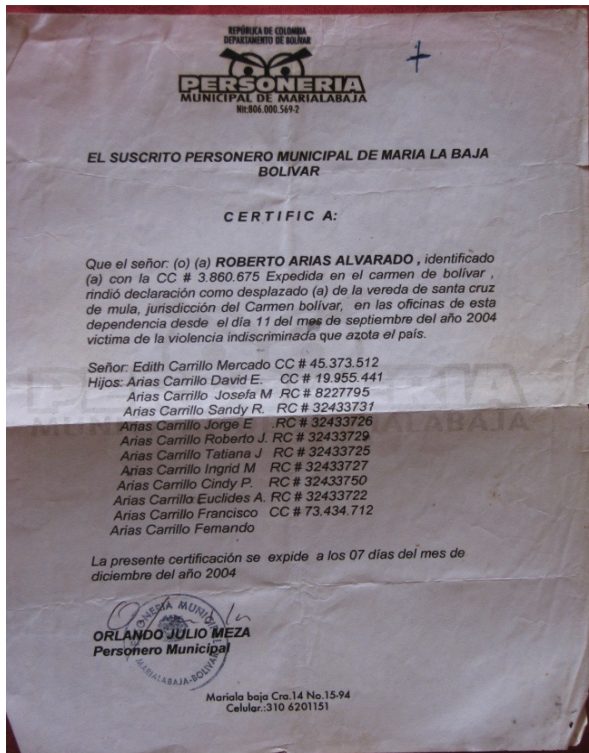


Figure 4. A letter of displacement



Figure 5. Campesino with his papers

ACCION HAMBRE COMISION EUROPEA

ENCUESTA PARA EL LEVANTAMIENTO DE LINEA BASE DE LAS FAMILIAS BENEFICIARIAS

Responsable de Evaluación: _____ Fecha de Primera Evaluación: _____
 Día: _____ Mes: _____ Año: _____ Fecha de Segunda Evaluación: _____
 Día: _____ Mes: _____ Año: _____

1. GENERALIDADES:

Departamento: Bolívar Municipio: Marabaja Barrio y/o vereda: Matuya

Nombre de la organización: Acción Social de Arica

Nombre y apellidos del entrevistado: Clotilde Plaza E. Rol familiar: Acá de casa

Composición familiar

Edades entre los 0 y 2 años	Edades entre los 2 y 5 años	Edades entre los 5 y 14 años	Edades entre los 14 y 19 años	Más de 19 años	Discap.	Étnia
Niños	Niños	Niños	Niños	Niños	Niños	Si
						No
		X				Si
						No

2. ASPECTOS ECONOMICOS

2.1 Generación de ingresos y gastos alimentarios

2.1.1 ¿Cuál fue el valor total de los ingresos generados? (en millones de Bs. 2009)

Ingresos generados: Desplazado de las actividades Otros ingresos: Comerciante Ahorros: No obtiene

INGRESOS AÑO 2009

Ingresos generados: No tiene posibilidad Otros ingresos: Comerciante Ahorros: No obtiene

2.1.2 ¿Del ingreso total cuánto destinó a alimentación?

a) Gastos en alimentos año 2008: Anual \$ 2000000

b) Gastos en alimentos año 2009: Hasta el momento \$ 2.250.000

2.1.3 ¿Los proyectos productivos cuentan con un plan de sostenibilidad financiera?

Primera evaluación	Segunda evaluación
SI	SI
NO X	NO

2.2 Venta o mercados locales y/o nacionales:

Primera evaluación	Segunda evaluación
SI X	SI
NO	NO

1

Figure 6. NGO Formulary

CARTAGENA DE INDIAS, 03 de Junio de 2008

SEÑOR:
 ACCION SOCIAL Y/O UAO
 Dr. ALFREDO YEPEZ DE LOS RIOS
 ASISTENTE COORDINADOR
 E. S. d.

ROBERTO JOSÉ ARIAS ALVARADO, mayor de edad, identificado como aparece al pie de mi firma, actuando en nombre propio como DESPLAZADO de el desplazamiento de el Gobierno de Bolívar desde el año 2002, concurro ante su Despacho a fin de solicitarle que de manera URGENTE se me suministren las ayudas a las cuales tengo derecho como alimentación, transporte y ubicación de vivienda, y tierra, toda vez que me encuentro padeciendo de necesidad, y se me imposibilita trabajar, en un lugar digno o en el oficio al cual siempre me he desempeñado como ama de casa y/o agricultor, del cual dependo mi sustento al igual que de mis dos hijos y mi computador (si permisionario).

Como se puede verificar, aparezco inscrito en el sistema único de Registro —Sur, suya se conformidad a lo solicitado, de manera urgente.

NOTIFICACIONES:

Los recibo en la secretaría de su Despacho o en mi domicilio ubicado en Matuya Marabaja - Bolívar.

Atentamente,

Roberto
 ROBERTO JOSÉ ARIAS ALVARADO
 C.E. No. 3.840.675 Carmen de Bolívar

Personería Municipal Marabaja

Asesoría Municipal

Figure 7. Letter addressed to Acción Social

CHAPTER 4

FORMALIZATION OF LAND OWNERSHIP: A DESCRIPTIVE ANALYSIS OF A PUBLIC DEED IN COLOMBIA

Introduction

In early 2002 I had just arrived in the village of San Pablo, south of the State of Bolivar in the northern part of Colombia. This territory, on the banks of the Magdalena River, had been the epicenter of decades of heated disputes between the army, guerilla groups, paramilitary forces and drug lords for control of the coca fields in the area. I had stopped my law school studies for a year and come to this region, known as Magdalena Medio, to do a year of volunteer work as a member of a humanitarian NGO working with communities of displaced *campesinos*.

Eager to discover this “other side” of Colombia that I had pontificated so much about during my early years at law school in Bogotá, I was now living right at the heart of the Colombian conflict. To my disappointment, I spent very little time in the field, discovering the landscape and meeting people in the area. I spent countless hours behind a desk, surrounded by documents, a laptop, and three other NGO members doing exactly the same. The four desks strategically located to offer each desk a view of the street on each side of a large room which the NGO had adapted as both an office and residence for the team working the village. I could have been anywhere if it had not been for the noise of the ceiling fan to cool the room and the view I had of the street, as the office door was kept open during the day. They reminded me of where I was.

Right from the start, and as the only lawyer in the team, the team coordinator asked me to assist with a housing project for 300 families in the area. The NGO had decided to actively participate with other organizations in the project. The project, led by local authorities and other NGOs, had been at a standstill for the last few of months. There was no clarity on what steps to take or how to deal with the set of laws and regulations outlined by the Government for a housing project of this kind. My first job was to provide clarification to both the team members and displaced families on what needed to be done.

After several weeks of studying housing regulations at the office, I called a meeting with a group that represented the 300 families that had started the paperwork and were registered for the project. My 45-minute presentation carefully outlined the legal requirements to apply for the housing project, the governmental institutions responsible for each step of the process and the role private organizations could play in the project. After a nervous start, my voice gained in confidence as I went on, sometimes carefully reading a line directly from the statute or regulation at hand, sometimes writing on the board, or displaying the charts and graphics I had prepared to recreate the application process. Sometimes I would pause to clarify a term or repeat some of the requirements. The participants did not ask any questions at this point; they seemed engaged and interested. Everyone listened carefully; some even took notes or nodded as I was speaking.

I remember finishing my exposition with a feeling of accomplishment and satisfaction. After all, I had managed to explain and clarify the process to be followed. This sense of confidence was due, at least in part, to the easiness I felt in reproducing a model of

exposition that I was familiar with; this was the model with which I had been taught at law school during classes such as Property and Contracts during my civil law training.

That day, among the participants there was a tall husky man in his mid-thirties who spoke impatiently with the “costeño” accent (often dropping the ends of words) so typical of the region and which made it harder for me to understand. Several months ago, he and his family had signed up for the housing project. They had arrived from the countryside to the village of San Pablo some years ago due to confrontations between army forces and the guerrilla. He and his family had settled on a small plot of land purchased from another *campesino* who had moved out of the village. He wanted to use the money from the project to improve his house. I remembered the list of requirements to apply for the subsidy for home improvement. The first requirement, as you might guess, and from which I had quickly moved on when preparing the presentation as it seemed fairly simple to explain, was the land title. Indeed, to ask him about the title seemed the most logical question to ask him. With a smile he said yes! He had the title right there with him, and he handed it to me.

He handed me a folded, dirty piece of paper. To my surprise it did not have the printed stamp with the national coat of arms on it, or the underlined paper style, or the courier new letter style with accents, commas and hyphens that most Public Deeds have. This was a piece of paper that someone had printed out for him. Remarkably it had some of the same features as a public deed. The place, the parties, the limits of the plot, and the transaction were all described in a familiar way. The paper was signed by both parties (buyer and seller) and next to each signature was the name and fingerprint. What I was most struck by was that it had been authenticated and stamped by the local notary. In disbelief, I asked if he had any other document that

demonstrated ownership of the land; he did not. In his eyes, this document was a legal title that made him the rightful owner of the land he wanted to use for the project; to my trained eye, he had no title, only what in legal jargon would be considered a private promise to sell, a “*carta venta*” as it is known in other regions of the country. I was amazed that he could think this was the title.

This episode marked my entrance to a different kind of work and perception of the law. From that point on, I have been astonished by similar examples I have repeatedly encountered in the field. During my fieldwork in the regions of Maria la Baja and Socorro, I came to expect a similar interaction whenever I asked for the title to the land of some of the families I worked with. I explained countless times the legal difference between an owner, a possessor and a holder of the land, and how the paper they believed gave them ownership of the land, in fact did not.

Seven years later, sitting in the office of the local notary in the town of Socorro, I finally had the chance to grasp the strange effects produced by formalizing property ownership of the land. The lawyer sitting in front of me, a middle-aged woman with a background in criminal law, had decided to become a notary several years ago. The office of the notary, as in any small colonial-style town in Colombia, was right next to the main square, just a few blocks away from the mayor’s office and facing one side of the big cathedral. The office was located in an old colonial house, its tall green doors leading directly to a big hall where two secretaries sat with their desks arranged in an L-shape. The office had a typewriter, a printer and a computer and was equipped to receive lawyers and clients that would come to do their business at the notary. Inside the hall where the secretaries sat was a half size wooden door and a fence that divided the hall from what it was a second room. Standing in the hall you could not see who

was sitting at the end of the second room. This was the office of the notary. Once in the office, you could appreciate the composition of the notary's desk: pens, seals, rubber bands and folders, a chart with prices and other documents below the glass on the desk, and a phone. A national flag with the coat of arms on the back wall oversaw the daily work of the woman sitting behind this desk. On the tape recording I made that day, I can hear the sounds of the typewriter and impact printer in the background, setting the tone of the interview.

We made some preliminary introductions to break up the tension: a visit from a tall, white, male, lawyer, certainly from the capital, a colleague but not looking like one, a kind of anthropologist interested in the problems of *campesinos* and their titles and inheritances, could certainly arouse suspicion. I went straight to the point. I pulled out a map of the rural district I had been working in. The main problem in the district was that certain parcels of land, allocated by the government to *campesinos* some twenty years ago, had been recently subdivided by some of the families. These new parcels had been redistributed by the families to relatives or other people in the community, either as a result of sales or inheritances when the original owner had died. All the families knew exactly how the parcels had been divided but they did not have new titles. Some of them had promises to sell or had no papers at all.

As our conversation went on we were joined by a law professor and former judge from the State Tribunal of Santander. He happened to have been a professor of the notary at law school. He had just arrived from Bucaramanga, as he came early on Fridays to spend the weekends in Socorro. That late afternoon, he had come to visit his former student to talk about the legal business of some common colleagues. Coincidentally, he had taught her Inheritances in law school, the topic that had driven me to pay this

visit. Together, they walked me through the steps of legalizing property in cases where the original owner had died. The conversation then moved on to the problems that *campesinos* had with obtaining the title of ownership to their land:

Me: Why do you think they (*campesinos*) have not done the paperwork?

Notary: That is what I have always told them. Without a title that is here at the Notary, in writing, there is nothing! And if that document is not registered, it means nothing as well.

Professor: There is a single truth at the bottom of this! When it comes to immobile goods (real estate) all transactions must be recorded in a public deed. There is nothing else one can do. That which is not recorded in a public deed, is void. It does not exist! The only thing they actually have is Possession.¹³⁴

(Conversation continues)

Professor: This is atavistic¹³⁵, and it will continue to happen. People say they sold but they have not sold. They (*campesinos*) respect each other's word, but legally, they have not come here. When one of them dies, then they (the heirs of the one who died) do come.

Me: And, what can be done with regards to this problem?

¹³⁴ Article 762 of the Colombian Civil Code (CCC) defines possession as: "the tenancy of a certain thing with the intention to be lord and owner, whether the owner or who is taken for such, has the thing himself or another person has it in his name. The possessor is reputed to be owner while other person does not justify to be such" (translation is mine). There are differences between the legal conception of possession under both the common law and civil law systems. Whereas in Britain and and US possession is established as a right. Under Civil Law countries possession has the status of a fact.)

¹³⁵ Latin word used in legal circles to denote a previous behavior that returns after an absence, or that pertains to a remote ancestor.

Professor: I think the answer is Education. These people must know that one cannot sell land without a deed. They must know that any negotiation that is not recorded in a public deed, under the law, is worth what the same as a three-penny business.

Notary: This is the truth.

Professor: Sometimes they come (from the countryside), and draft some piece of paper ... and end up getting robbed.

Notary: One would think that at this moment, in the twenty-first century, such cases no longer exist. But they do. The other day a woman came to ask me to record a public deed because she was going to sell to another friend. I said, "Fine, well, let me see the public deed". "What deed?". "The deed you have, so you can sell". "No, I did not have a deed drafted; I have this, a promise of sale." And she was convinced that with that promise of sale she had ownership over the land. "You have just that, a promise that you are going to have a contract, something that tells you that you will eventually have a contract ..."

Professor: From an anthropological perspective, people are afraid to go to a lawyer because they believe that (s)he will charge a fortune. And they have the belief that all lawyers steal, because all of them are thieves [both of them laugh]. And then people do not go to a lawyer, when on the contrary the lawyer is a counselor that should be regarded as a physician. That's the way it should be.

Notary: Yes, and ultimately it will prevent many headaches and save them money, if they do things right and on time.

Above all you realize that, for example, four or five years ago the land tax certificate was not required to issue a new title. Now we require it. And so this is a new expense that they must incur in. They have to go to the municipality of San Gil to get a

certificate and bring it here, in order to make the division¹³⁶. If they had taken care of the title a few years ago, they would not need to get this certificate now. Before, it was quite simple to carry out segregations¹³⁷ (divisions).

Me: I have noticed that when they agree to a sale, or when they have the promise to sell, as we have said, they come here and have the promise authenticated

Notary: Yes, but in this case it is the signatures that are authenticated. I mean, the person comes to me and I acknowledge that he/she is the person that appears on the national identification, (ID) card that he/she is presenting as their own; that he/she is, in fact, Jane or John Doe as the document says. That's all I can say. Nothing more. The document itself, its content, is not authenticated.

Me: But they assign a value to that.

Professor: That is worthless. It is an unfulfilled promise by both parties. Just imagine! It will be subject to termination¹³⁸.

Notary: There are times when they bring these sheets of paper. That they fold them and fold them and fold them [Professor laughs]. I mean when you pick them up, these promises dissolve. And people are sure, positive, that is the property

Me: But, what happens when, for example, they realize this? What do they do if the person who sold them is no longer there? If they disappeared or died? Or even if those who are no longer there, had bought from others? How does one solve this?

Professor: In that case, one must claim adverse possession¹³⁹. However, the promise to sell must not be mentioned. 'I have been here for 10 years' and, that's it! If you show

¹³⁶ Division in this context refers to the subdivision made of the parcel of land among heirs of the deceased owner, or among buyer of smaller plots from a mother plot.

¹³⁷ Segregation is usually used by lawyers as synonym for division, to denote the separation of a portion or portions of a collective or complex unity from the rest.

¹³⁸ Under Colombian law termination means the contract terminates by the impossibility to transfer the plot given there was no new act after the promise that transfer the title. Under Colombia civil law, all actions over real state property must be recorded in a public deed. Art 12 of Decree 960 of 1970, also see article 1857 Colombia Civil Code.

¹³⁹ Adverse Possession under Colombian Civil regulation is established under Art. 2512.

the promise to sell, you risk being seen as tenant and they will deny the adverse possession.

In different legal settings that I visited often during my fieldwork, such as small town notaries, the offices of state institutions dealing with land, court houses and offices of registration, there seemed to be one unquestionable truth regarding land ownership. Land property does not exist without a legal title. During the conversation that afternoon, the Notary had gone numerous times to a green folder sitting on her desk, a land title she had been working on. The folder had different documents stapled to different edges of it and contained the public deed as the main document inside. Every time she made a point about the title, she moved her hand and stamped it on the folder. The conversation, while interesting, did not offer anything that I did not already know. I have heard and said the same things countless times to *campesinos*. The difference that afternoon, I thought, as I was cutting across the square, was that this time I understood that all of us knew land property existed outside the title. Like her hand moving on top of the folder, we just kept trying to see the property of land in the title.

Hernando de Soto the Institutional Economist and the hidden legal infrastructure of Capitalism

Hernando de Soto's best-seller book "The Mystery of Capital" offers yet another attempt at exploring the reasons why the capitalist recipe for success in the West has not spread around to other regions of the world. De Soto's main argument stands for its straightforwardness. Bluntly put, he seems to suggest that the missing piece for economic progress to take over in poor countries is the lack of institutional

arrangements that could lead to the instilment of development and capital growth in these regions of the world. De Soto's recipe seems to be a simple one: bring institutionality¹⁴⁰ and incorporate formalization, and progress will come about to the, until now, excluded marginal society whose practices share a remarkably similar economic logic.

According to him, capitalism has succeeded in the First World because of the mechanism set in place that has allowed the creation of capital. De Soto describes this process as the human ability to comprehend and gain access to those things we know exist but cannot be seen, by representing them in titles. By representing assets with titles, Westerners are able to see and draw capital from them.

Consequently de Soto explains:

“The absence of this process in the poorer regions of the world -where two-thirds of humanity lives- is not the consequence of some Western monopolistic conspiracy. It is rather that Westerners take this mechanism so completely for granted that they have lost all awareness of its existence. Although it is huge, nobody sees it, including the Americans, Europeans, and Japanese who owe all their wealth to their ability to use it. **It is an implicit legal infrastructure**

¹⁴⁰ De Soto himself has often pointed out that his Institute for Liberty and Democracy is not just about titling. “What we do is help Governments build a system of public memory that legally identifies all their people, their assets, their business records and their transactions in such a way that they can unleash their economic potential. No economy can develop and prosper without the benefits that clearly registered public documents bestow.” Hernando De Soto, and Francis Cheneval, *Realizing Property Rights* (Swiss Human Rights Book Volume 1, 2006.) Efforts to trace de Soto's analytical shifts from his first book *The other Path* in 1989 to the *Mystery of Capital* in 2000 include Paul Laurent, *El misterio de un liberal: el extraviado sendero de Hernando de Soto* (Lima: Nomos & Thesis Editorial, 2009); Peñalver, Eduardo, “The Costs of Regulation of the Consequences of Poverty? Progressive Lessons from de Soto” in *Hernando de Soto and property in a market economy*, Ed. D. Benjamin (Farnham, Surrey: Ashgate Pub, 2010.)

hidden deep within their property system- of which ownership is but the tip of the iceberg. The rest of the iceberg is an intricate man-made process that can transform assets and labor into capital. This process was not created from blueprint and is not described in a glossy brochure. **Its origins are obscure and its significance buried in the economic subconscious of Western capitalist nations.”**¹⁴¹ (emphasis added)

According to de Soto, the West has the recipe for success. But unlike before, this time it is not only about Third World Countries trying to catch up with the West in the production of wealth, but also about recognizing the wealth that already exists. The success of Third World countries depends on allowing assets to achieve their transformative potential into capital, and taking the step from “the material world into the conceptual universe where capital lives.”¹⁴² With this insight, de Soto pushes forth new and old arguments to support his claim.

For instance, he uses a powerful and captivating rhetoric in his definition of what constitutes being poor in the third world. He organizes a data set of pictures and charts of assets belonging to the poor in third world countries (especially in urban centers) displaying their hidden potential to be capital.¹⁴³ He exhorts lawyers to work on behalf of the poor by creating laws that include an efficient, simple and central system to register property.¹⁴⁴ While reading his book, one notices in the background an image of a far-removed lawyer who lives in a bell jar away from the problems of

¹⁴¹ De Soto, Hernando, *The mystery of capital: why capitalism triumphs in the West and fails everywhere else* (New York: Basic Books, 2000), 7-8.

¹⁴² *Ibid.*, 50.

¹⁴³ *Ibid.*, 15-37.

¹⁴⁴ *Ibid.*, 153-154.

the poor.¹⁴⁵ At the same time, however, he points out that a clear system of property laws will assure respect and compliance with the law¹⁴⁶ and that a society's political move towards the inclusion of extralegal property shows a sign of maturity in advanced countries.¹⁴⁷ Central to his argument, is the idea that the social contract is the foundation of society's collective decision making,¹⁴⁸ and that advanced societies must include a number of institutional arrangements to obtain consent.¹⁴⁹ Throughout the book he moves towards what is perhaps the broadest assumption in this work: his unquestioned belief in progress and capitalism. A move that some of us see as an ideological position that fails to take into account a vast number of possibilities, cultures, histories and relationships.¹⁵⁰ Nevertheless, de Soto's insight and arguments have accomplished what so few others have. His work has revived old debates and sparked new ones in a whole gamut of disciplines¹⁵¹.

¹⁴⁵ Ibid., 197.

¹⁴⁶ Ibid., 195.

¹⁴⁷ Ibid., 148-151.

¹⁴⁸ Ibid., 171-178.

¹⁴⁹ Ibid., 223.

¹⁵⁰ David Kennedy, "Some Caution about Property Rights as a Recipe for Economic. Development" Harvard Law School Faculty Website, (2010), 16. Accessed June 15, 2011. <http://www.law.harvard.edu/faculty/dkennedy/publications/PropertyRightsDevelopmentOct17Draft.pdf>

¹⁵¹ See for example in Economic Theory and Law and Economics: R. Rossini, "The size of the informal sector in Peru: A critical comment on Hernando de Soto's El Otro Sendero" in *World Development*.18 no. 1(1990):125-135; Benito Arruñada, and Nuno Garoup, "The Choice of Titling System in Land", in *The Journal of Law and Economics* 48 no.2 (2005):709-727; Jedediah Purdy, "A Freedom-Promoting Approach to Property: A Renewed Tradition for New Debates" in *the University of Chicago Law Review* 72 no. 4 (2005):. 1237-1298; in Law and Development: Benjamin Barros Benjamin, *Hernando de Soto and property in a market economy* (Farnham, Surrey: Ashgate Pub, 2010); Celestine Nyamu-Musembi, "De Soto and Land Relations in Rural Africa: breathing life into dead theories about property rights" in *Third World Quarterly*. 28, No. 8:1457-1478; in Foreign Policy: Heather Bourbeau, "Property Wrongs" in Washingtonpost.Newsweek Interactive, , 200; in Urban Studies: P. Dosh and J. Lerager, "Surprising Trends in Land Invasions in Metropolitan Lima and Quito" in *Latin American Perspectives* 33 no. 6 (2006): 29-54; Richard Webb et. al, "La construcción del derecho de propiedad: el caso de los asentamientos humanos en el Perú" (Colegio de Notarios de Lima, 2006); in Sociology Studies: Julia Elyachar, "Mappings of Power: The State, NGOs, and International Organizations in the Informal Economy of Cairo" in *Comparative Studies in Society and History* 45 no. 3 2003): 571-605; in Anthropology: Gregg Hetherington "Privatizing the private in rural Paraguay: Precarious lots and the materiality of rights" in *American Ethnologist* 36 no. 2 (2009): 224-241.

In this chapter I propose to make a different approach to the issue of formalization of land ownership in which I move away from some of the central debates de Soto has sparked in his work. I propose to take a step back and attempt to provide an alternative explanation to what de Soto refers to as “an implicit legal infrastructure hidden deep within their property system” which allows for capital to be created. I will try to engage with the particular technology that allows the formalization of land ownership. My engagement with this technology is done through the aesthetical analysis of the land title and its core document, the Public Deed. I will do so by first describing a legally constituted public deed.

Such aesthetical approaches have been taken before in the analysis of draft agreements at international conferences, ceremonial mats,¹⁵² and financial agreements.¹⁵³ Behind this particular engagement there is an increased amount of scholars in different disciplines trying to relate analytically to phenomena in ways that escape and problematize broad and structural transformations or configurations of society and culture.¹⁵⁴ Challenging the divide between culture and nature, such a view has allowed for the constitution of networks between entities as different as documents, people, ideas, computes and institutions.¹⁵⁵ It challenges the powerful analytic construction in which we mold our own knowledge practice to propose alternative analytic frameworks.¹⁵⁶

Looking at the Deed. The emergence of the Seal

¹⁵² Annelise Riles, *The network inside out* (Ann Arbor: University of Michigan Press, 2000).

¹⁵³ Riles, *Collateral Knowledge*.

¹⁵⁴ Aihwa Ong and Stephen J. Collier, *Global assemblages: technology, politics, and ethics as anthropological problems* (Malden, MA: Blackwell Pub, 2005).

¹⁵⁵ Latour, *We Have Never Been Modern*.

¹⁵⁶ C.M. Hann, *Property relations: renewing the anthropological tradition* (Cambridge: Cambridge University Press, 1998), 45.

By keeping a sharp eye on uncovering the technology of the land title¹⁵⁷, I will attempt to explain the effects caused by the formalization of land property, on lawyers or anyone well acquainted with property law. In my aesthetical engagement with the title I will dive into what de Soto describes as the “deeps within the property system.” I proceed to open the green folder of the title. Attached at the inside edges of the folder are a few documents (i.e. a tax certificate, a receipt proof for the recording, or “comprobante de pago por registro notarial”), and inside, lies the core of the land title, the Public Deed.¹⁵⁸

The public deed document I am looking at belongs to one of the *campesino* families I work with in the El Socorro, a small community in the Colombian province of Santander, which is one of the two field sites of my ethnographical work. Unlike de Soto’s representation of the extralegal in third world countries, I find in my work sites a mixture of *campesinos* with titles, others with only promises to sell (also known as “*carta ventas*”), and others with no papers at all. The public deed owned by this family was part of a project of subdivision of land led by Incoder (the governmental office responsible for the implementation of programs directed toward improving the living conditions of rural peasants) from 1969 to 1985. The project arose after a long

¹⁵⁷ With this sentence I want to make explicit my own position and connections. It is I myself who looks. But my look tries not to take myself for granted. I tried to follow Marilyn Strathern “What you see is not a representation of the world; it is evidence of your point of being in it. What you see is there to be seen because the observer is in the appropriate social condition to register the effect of what is being observed”. Marilyn Strathern, *Property, substance, and effect: anthropological essays on persons and things* (London: Athlone Press, 1999), 259.

¹⁵⁸ In Colombian law transactions over land ownership consist of a two tier process. First, the transaction is recorded in a public deed which constitutes the title. Then, the title is registered at the office of registration of public documents from which you obtain a certificate of registration known as “Certificado de tradición” o “matrícula inmobiliaria”. According to Art 756 CCC transfer of ownership is incomplete without registration. For the sake of the argument I will concentrate here in the first step of the process: the issuing of the public deed. This is the document that to most people represents land ownership. Coincidentally a seal watermark is displayed in the background of most certificates of registration, also know as “certificados de tradición” that are issued today.

territorial dispute that the *campesinos* had to endure to gain ownership of the land they had worked for decades. The bigger plot of land, known as “Hacienda El Líbano,” is today a rural district in the municipality of el Socorro, initially divided among 37 *campesino* families. Two *campesinos* were killed in the struggle for land ownership.

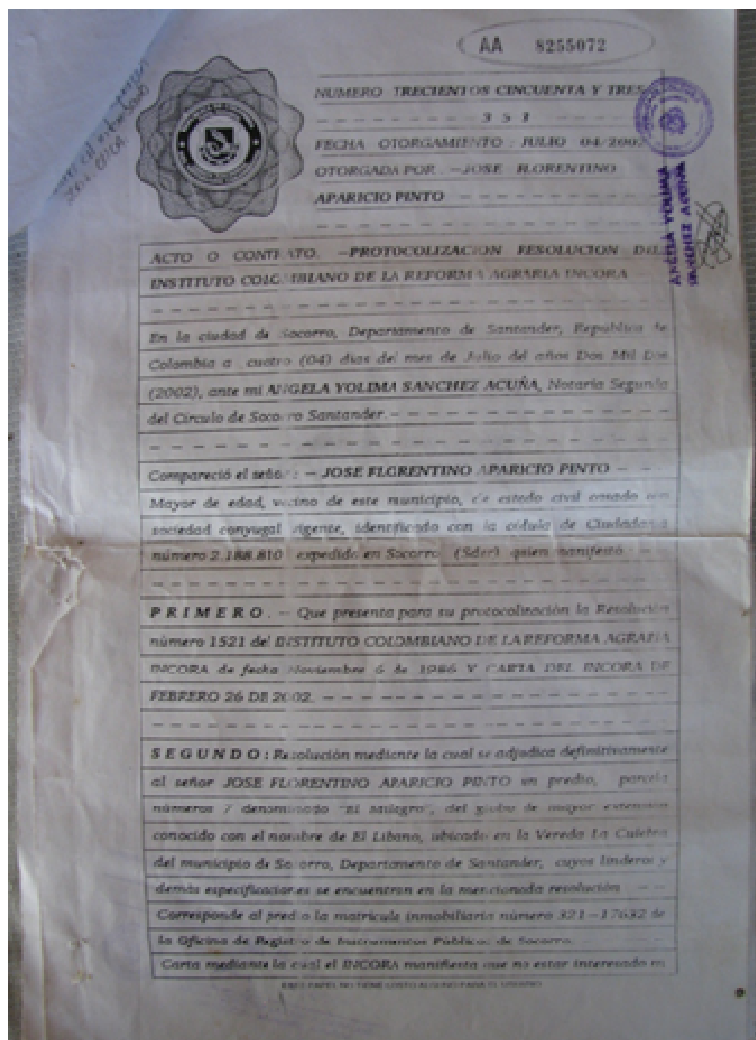


Figure 8. Public deed, first page

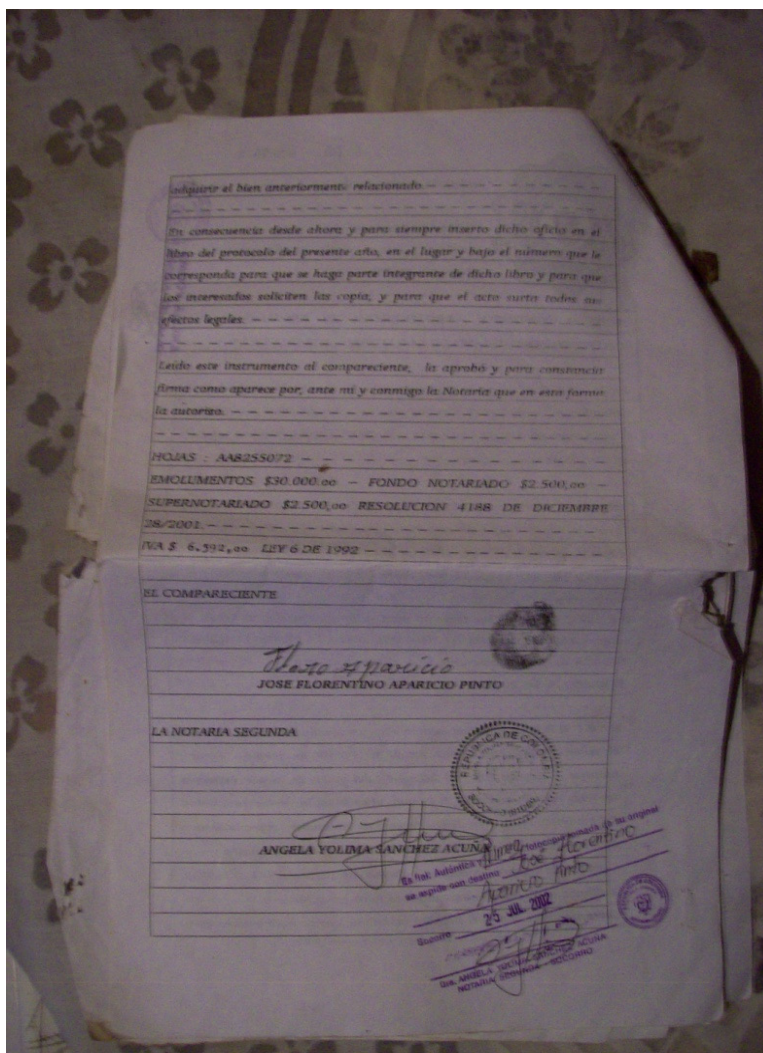


Figure 9. Public deed, second page

Looking at the public deed (Figure. 8 and 9) you realize the importance of this document in relation to other documents. The kind of paper (a notarized, stamped paper) and its textural quality (thicker and heavier than most documents) makes it of a particular kind. The paper has the official size of any legal document. It is designed with a framed rectangular box from which perpendicular lines come out forming a lined sheet of paper. Atop the lines is the careful display of the text in typewritten letter with commas, accents, capital letter, hyphens, bold lettering, and never surpassing the margins of the document. Each box formed by the lined format is used in full. Any space left blank by the text is completed with additional hyphens until they meet the margin. At the end of the document lie the signatures of the parties involved and their fingerprints identifying each person. Immediately below the fingerprints is the signature of the notary public, accompanied by the notarial stamp. This stamp is one among a number of stamps you see on the deed, each with a different meaning.

Below the notarial stamp is a stamped form that reads: “This document is a faithful and first copy of the original issued to: _____ (i.e. a space for the name of the person requesting a copy.)” Then it reads: “town of El Socorro”, followed by a space for the date. After this comes the stamped name of the notary public, his or her signature, and then a second stamp that is smaller in size. A third stamp, similar in size to the second one, is seen at the right hand corner of the first page, attesting for the authenticity of the copy of this first page. Once again comes the stamped name of the notary public along with his or her signature. Outside the frame of the deed, above the top right corner of the first page, there is a serial number inside an elliptical shape, attesting for the uniqueness of the notarial page.

Finally, standing out of the margins framing the interior of the deed we see a different kind of stamp. This particular stamp is different in size in relation to the composition of the deed. It has the effect of coming out from the frame. This is one of the most remarkable features one sees when looking at a public deed. It is what catches one's attention at first glance and allows a trained eye familiar with titles in Colombia to distinguish the special character of the public deed among other documents. The preeminence of this stamp governs the entire composition of the Deed (Figures 10 and 11.)

For the naked eye, and despite its remarkable features, it is difficult to distinguish its unique quality from the rest of the stamps composing the deed. What kind relationship is this stamp trying to validate, if not the authenticity of the copy, or identity of the notary public? This stamp is not a stamp, but rather, it is a Seal. More precisely it is a wax Royal Seal (Figures 12 and 13,) used by the King of Spain to issue the first land titles in the country. Those titles are known as "Reales Cédulas de Mercedes de Tierras,"¹⁵⁹ which organized private property in Colombia during the colonial period.¹⁶⁰ As I will attempt to explain, the seal and the deed are intrinsically related to one another. It is the royal seal what gives this document its identity as a public deed.

The Seal is an antique technology that was used either over lumps of clay to secure the content of bags, which were attached to cords placed around vellums or papyrus scrolls to close the contents of the bags, or it was stamped over melted wax to close folded documents, thus guaranteeing their secrecy. The Seal, once opened, would

¹⁵⁹ Orlando Fals-Borda, *Historia doble de la costa* (Bogotá: C. Valencia Editores, 1979); also Absalón Machado, *Ensayos para la historia de la política de tierras en Colombia* (Bogotá: Editorial Universidad Nacional de Colombia, 2009), 24.

¹⁶⁰ For now I will leave aside the colonial underpinning of this discovery. However, sealed documents and sealed people (slaves) are both very powerful artifacts of colonialism.

reveal the effects of formalizing property ownership over land and would shed light into our current understanding of property in Western legal thought¹⁶¹.

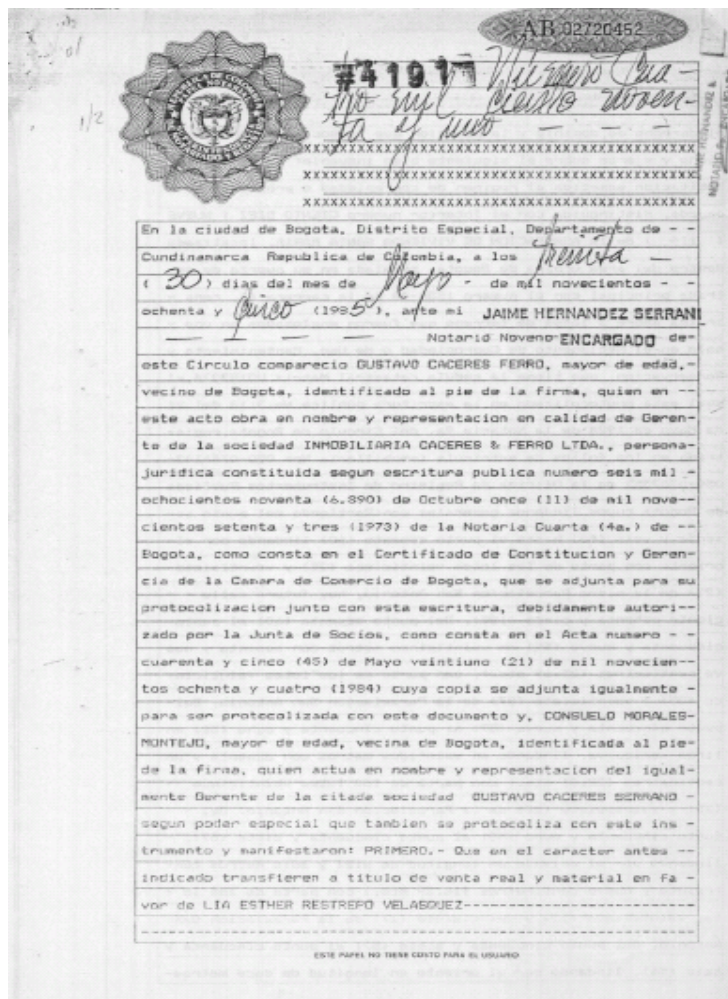


Fig 10: Public deed of my mother's house. Bogotá, Colombia

¹⁶¹ Most aspects of the problem I consider are specific to the narrower notion of ownership, even though some aspects refer to a wider notion of property in western legal thought.

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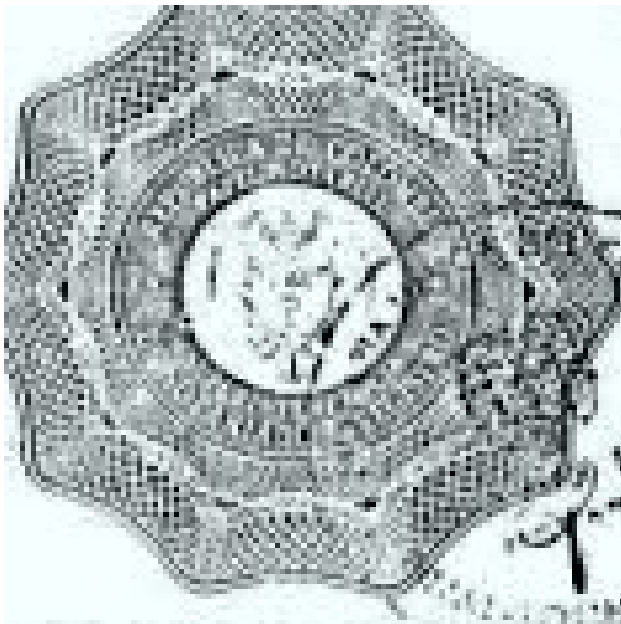


Fig 12: Sample of a notarial seal in a public deed (inside the Coat of Arms of Colombia)



© www.123rf.com

Fig 13: Sample of a royal seal (Image taken from 123RF.com)



Fig 14: A bare royal seal (Image taken from 123RF.com)



Fig 15: A security device embedded in the seal

The technology of the Seal, the technology of property

Seals awaken our imagination and fascination because of their mystifying powers. Upon close examination, the royal Seal opens up the connections and associations we make when we think about land ownership, property and legal knowledge. Such conceptions have influenced the way we as lawyers understand and organize the world before us. In the context of property, legal techniques have contributed to the presupposition of a division between persons and things;¹⁶² this division frames one as the antithesis of the other. However, with the advent of new technologies that allow for the ownership of human tissue and even embryos, scholars have started to explore how such division between people and things may fall short of explaining these new phenomena. The moved towards treating property as a network of social relations has become a fruitful starting point for academic inquires by both for anthropologists and property law scholars.¹⁶³

Remains of archaic Seals dating back to ancient times suggest that historically, seals appeared before writing did.¹⁶⁴ For instance, there are close connections between Seals and the appearance of legal documents.¹⁶⁵ Seals (*signum*) were of common use

¹⁶² Alain Pottage and Martha Mundy, *Law, anthropology, and the constitution of the social: making persons and things* (Cambridge: Cambridge University Press, 2004)

¹⁶³ Marilyn Strathern, *Property, substance, and effect*; Hann, *Property relations*; Joseph William Singer, *Entitlement: the paradoxes of property*. (New Haven: Yale University Press, 2000).

¹⁶⁴ The historic connections between land property, seals, writing and law are too powerful and exceeds well beyond the scope of this chapter. Some of the first early writings of ancient civilization were public deeds. Three thousand two hundred years ago Kudurrus were stones that contained records of land granted by the king to vassals in ancient Mesopotamia. These stones now displayed in sections of Ancient Civilization in museums like the Louvre are among the first cylindrical seals encounter in Mesopotamia. See William Hayes Ward, *The seal cylinders of western Asia* (Washington, D.C.: Carnegie Institution of Washington, 1910).

¹⁶⁵ The book Exodus tells us of an episode in which land was purchased by Abrahm from Ephoron “So Ephron’s field in Machpelah near Mamre—both the field and the cave in it, and all the trees within the borders of the field—was deeded to Abraham as his property in the presence of all the Hittites who had come to the gate of the city” Genesis 23, 17. Also Eusebius of Caesarea a roman historian have related of Noah’s testament, made in writing, and witnessed under his seal, by which he disposed of the whole

in Roman times to subscribe documents or to provide a specific label to an object to indicate ownership.¹⁶⁶ These marks were regularly used by Kings in Medieval Europe to subscribe documents, and their use became widespread among religious authorities, nobles and towns to authenticate documents. Throughout time the use of Seals was widespread and even expanded.¹⁶⁷ Today, Stamp and Seals are found in a wide variety of objects, including, diplomas, library cards, passports, and letters, among others.

For now, I want to return to the aesthetic analysis of the Royal Seal in the Public Deed, and its transformation from a stamp to a wax seal. The wax seal in Figure 13 adds a third dimension to the Deed. The perspective gained in this transition from a stamp to a wax seal allows us to sketch out two major effects of critical importance in explaining the formalization of property over land, and some important features of property and legal knowledge.

First, I contend that the main effects of the formalization of property is that it solidifies a particular relationship in time and space. This solidified relationship is what renders land as a thing to be legally owned. This relationship can be seen when you contemplate the engraved wax seal of the deed, in which the object appears to be frozen. Once the wax solidifies, the shape given by the engraved seal becomes

world. Additionally, in Genesis 48, 7 a transfer of land is spoken of, where Jacob bequeaths to his son Joseph, a portion of his inheritance, double to that of his brethren.

¹⁶⁶ Definition of the word “Signare” in *Encyclopaedic Dictionary of Roman Law*. Ed. Adolf Berger (Philadelphia: American Philosophical Society, 1953), 707.

¹⁶⁷ As the mechanism expanded with the mass production of printed paper (perhaps with the invention of the printing press), stamps and seals started to share some of their uses. Both shared the same mechanism, “an impression made by the impact of a hard engraved surface on a softer material.” Still in some languages, Seal and Stamp are called the same, for example, “Sello” in Spanish.

permanent. I will later explain how some of the legal techniques we use achieve this effect of solidification over relationships.

Second, I suggest that there is an important optical effect provided by the wax seal. The three-dimensional perspective obtained by the wax engraving makes us aware of an outside: There is an amorphous mass in the outer part of the figure that is not captured by the action of engraving. This perspective of an outer exterior is harder to capture in the two-dimensional figure stamped in a piece of paper. Thus, it is the optical effect contained in the mechanism of sealing a deed with wax that allows the eye to intuitively focus on the figure alone, while the outside is often forgotten or overlooked. As I will explain in detail later on, this optical effect is frequently experienced by lawyers when thinking and acting upon the world we live in. In other words, I will argue that our knowledge practices as legal experts constantly honor the self-referentiality of the Seal. We are continually looking at what lies within the seal.

The circle- the realm of property law

What maintains our view anchored in the seal is its effect of delimiting the outside from the inside, the circular shape left by the engraving in the wax (Figure 14) It is the construction of a boundary line that divides the inside of the circle from the outside. It provides us with the ability to recognize the shape from the amorphous lump of wax and distinguish an inside from outside of this circular shape. Such inside-outside divide seems almost natural by the physical limits of our perceptions.

In property law such an inside-outside divide is at the core of its work. Traditionally classic property theory has placed emphasis in the conception of property as

ownership.¹⁶⁸ The owner thus has the power to exclude others from the control of a resource or a thing, refuse the privilege to use it, apply the power to transfer it, among other entitlements.¹⁶⁹

In the classic theory of property, the most perfect union with a thing is that which allows lawyers to characterize property of land as the strongest type of relationship.¹⁷⁰ This relationship with land is often understood as fee simple state absolute in possession. If one ponders upon the shape of the circle in the Royal seal (Figure 14) one realizes that a figure emerges only after the wax lump is stamped with the shape of the seal. The complete circle is what in economic terms represents a single unit of account. By the same token, a single unit and its quantification as one, is the representation of totality when dealing with fractions or probabilities in mathematics. These are assumptions that operate in classic theory of property when thinking about land ownership as having exclusive rights to the thing owned.

In today's notion of property as a bundle of rights, ownership rests on a similar conception of the inside-outside divide, only this time it does not represent absolute control of the thing. To have ownership is to have the fullest bundle of rights, or sticks, that the law allows.¹⁷¹ For example, when a person owns a house or a plot of land, he or she may enforce a series of rights against other people, such as the right to

¹⁶⁸ Joseph William Singer, *Introduction to property* (New York: Aspen Publishers. 2005), 2.

¹⁶⁹ I argue primarily against a traditional notion of property. However, property law theorists have showed us that such control demands equally other duties that come with it, and correlative obligations with others persons property. Ownership then means not the absolute right to control what one owns, but rather, it is the fullest bundle of rights that the law recognizes. Such rights associated with ownership are possible to unbundled or disaggregate. See Signer, *Introduction to property*, 3. In the characterization I make of ownership, both traditional approaches and bundle of rights approaches start with the assumption that things already appear to exist in the world and then establishing property is a question of creating personal claims in them. See Strathern, *Property, substance, and effect*, 18.

¹⁷⁰ See for example: Peter G. Turner, "Degrees of Property" in *University of Cambridge Faculty of Law Research Paper* No. 01, 2011. Available at SSRN: <http://ssrn.com/abstract=1735953>

¹⁷¹ Singer, *Entitlement*, 3.

quiet enjoyment, the right to exclude others from the land, the right to remove trespassers, and the right to create a contract for the sale of the property. Non-owners, on the other hand, have a series of duties, such as not to trespass, and not to convert the property for their personal use. Equally, the owner could exercise other privileges, such as allowing others to trespass the property only in case of an emergency, or to restrain outsiders from using the property in ways that affect others properties. On the other hand, land owners have the duty to avoid hazardous nuisance on the land that could potentially affect others. As Kennedy suggests, property law in this sense “creates and distributes rights and duties among people.”¹⁷²

I want to explore how such a relationship of ownership over land is formed by going back to the creation of land as a thing.¹⁷³ My account is a reconstruction of how land

¹⁷² Kennedy, “Some Caution about Property Rights,” 27.

¹⁷³ I will leave aside the debate about ownership and material possession that dominated the legal arena in continental Europe during an important part of the nineteenth-century. Such debate usually refers to as the controversy between Friedrich Karl von Savigny and Rudolf von Jhering on the concept of possession in Roman Law. Such disputes between the constitutive elements of possession, corpus and animus are still very much alive in countries with a civil law tradition such as Colombia.

I want to move away from this debate with a quote from Rudolf von Jhering in the *Spirit of Roman Law*: “the original right of property can only be justified by the accident or merit of prior occupancy; and on this foundation it is wisely established by the philosophy of the civilians. The savage who hollows a tree, inserts a sharp stone into a wooden handle, or applies a string to an elastic branch, becomes in a state of nature the just proprietor of the canoe, the bow, or the hatchet [...] the colony multiplies, while the space still continues the same; the common rights, the equal inheritance of mankind, are engrossed by the bold and crafty; each field and forest is circumscribed by the landmarks of a jealous master; and it is the peculiar praise of the Roman jurisprudence that it asserts the claim of the first occupant of the wild animals of the earth, the air, and the waters. In the progress from primitive equity to final injustice, the steps are silent, the shades are almost imperceptible, and the absolute monopoly is guarded by positive laws and artificial reason. The active insatiate principle of self-love can alone supply the arts of life and the wages of industry; and soon as civil government and exclusive property have been introduced, they become necessary to the existence of the human race [...]” F. H. Lawson, *The Roman law reader* (Dobbs Ferry, N.Y.: Oceana Publications, 1969), 33.

Just as Carol Rose’s analysis on Blackstone’s *Commentaries on the Laws of England* and Locke’s *Second Treaty of Government* rightly concludes, “such stories about property show how the existence of a property regime is not predictable from a starting point of rational self-interest; and consequently, from that perspective, property needs a tale, a story, a pot-hoc explanation, that over time start to become assumed dogmas”. Carol Rose, “Property as Storytelling: Perspectives from Game Theory, Narrative Theory, Feminist Theory” in *Perspectives on property law*, Eds. Robert C Ellickson. Et.al. (New York: Aspen Law & Business, 2002). 44. For the sake of the argument in this chapter I take material possession and ownership to be part of the same conceptual framework of property in Western

is created in the world of law using the very particular technology of the sealed document of the deed. The story takes place at the Colombian Notary.

In civil law systems the figure of the notary public has powers that are far reaching than those of common law notaries. The executive branch establishes the responsibilities and powers of the notary. It has its own statutes and competencies like the drafting, taking and recording of legal instruments for private parties (Decree 960 of 1970, article 3). Notaries are vested as public officers with the authentication power of the State. The notary public in Colombia must be a legally trained person or a lawyer who is licensed by the State to perform acts in legal affairs.

The place of the Notary is the birthplace of the deed that I am exploring. The focus on the public deed reveals how land is individuated as a thing and how the thoughts of lawyers concerning land ownership are shaped by such technology. I aim to explain how we are able to create this inside-outside divide in something as important as land. It is this technology of the deed that has allowed us to comfortably talk and think about something we called “a piece of land,”¹⁷⁴ something that we can fictitiously disaggregate, ascribe qualities and rights to, and assign different entitlements on.

legal thought. The concept of material possession we assumed as natural, describing the energy put into nature to claim it as your own, is the formalization of a particular relationship with nature. The relationship that allows saying this is mine upon the energies input in nature presupposes a formalized mode of thinking about the world around us; a formal kind of knowledge that allows for control of things. In this conception ownership and possession do not run against each other. It is not the confrontation between registered title owners against squanders. It is rather, both of them caught by similar legal technologies that allow us to individuate land as a thing to be controlled, to understand the energy we put in nature as an individual act, to make nature the mirror of our own labor. As Rose, once again recognizes, possession is a form of communication, a particular language. The fact of understanding possession as a clear and distinctively way of saying this is mine. Carol Rose, “Possession as the Origin of Property,” in *Property and persuasion: essays on the history, theory, and rhetoric of ownership* (Boulder, Colorado: Westview Press, 1994).

¹⁷⁴By calling land “a thing”, “a piece of land”, “a plot”, I refer to the fabrication of land as a legal category of a thing we can own (res). I also refer to the cognitive construction that allows us to think about land as something already divided in the real world. Important anthropological studies have produced several counter examples according to which relationships with and within land are imagined

Individuation in the Deed

The deed (Figures 8 and 9) is not just a result of a transfer taking place at the notary, more importantly this document is a detailed description of this event. After the headings, the deed starts by identifying where the transfer took place: in this case (Figures 8 and 9), the village of el Socorro. It records the date of the transfer: the 4th of July, 2002. Then, the deed starts with the cliché phrase “appearing before me [.]” and then follows the notary’s name, and his or her office number: The Second Notary of Socorro, Santander. Then, the parties to the contract are fully identified by their name, residence, confirmation of their having attained the required legal age, marital status and identification number.

Then, a number of different clauses are contained in the deed. The first one expresses the will of the parties to formalize the transaction, and describes the kind of transaction formalized: a sales contract, inheritance, or direct adjudication by decree, among others.

The second clause provides a complete description of the item to be transferred, in this case the parcel of land. Identifying information is given about it including its location, dimensions, and boundaries with neighbor plots. The deed describes the legal history of the parcel including previously recorded transactions involving the plot, and adding the property registration number or the registration number of the bigger plot divided.

within a different framework of social relations. For example, land as the mother, the virgin; taro plants as children.

Then, a number of clauses establish the payment price and outline the terms of the agreement and the specific rights and duties that the involved parties must accept (these are the general regulations and the specific terms of the agreement). Finally the document closes with the phrase: “Having read the present instrument to the present, and duly informed of the need to register this instrument [document], they approve it and sign as proof, together with me, the Notary that bears witness”.

An examination of the deed reveals that the formalization of the transfer happens by successive acts of individuation taking place between persons. The place and the date set the event in a specific spatio-temporal relationship where the parties interact. All features mentioned of the parties constitute attempts to identify or distinguish each person taking place in the transaction. The use of signatures, fingerprints, and identification numbers are attempts to record each person’s individuality by reference to their unique, distinguishing body features.¹⁷⁵

A person’s characteristics such as legal age, civil status, or residence serve as coordinates to locate each individual person that is taking part in this event. The notary is also individualized by her name, signature, and notarial stamp crediting her status. Additional efforts to identify persons are added commensurate with the importance of the transaction (e.g. additional stamps, addition of further identifying features, or a requirement for the person to initial each page).

¹⁷⁵ The Notary looks at the Photo ID to establish that the photograph is of the person before her, and this allows the Notary to affirm that the name and number given in the ID match with the physical characteristics seen in the person. Here I draw from Stratherns’ idea of individuation for Euro-American person as a contrast to that of persons from Papua New Guinea. The individualized Euro-American person is recognizable in the individualized body with its unique characteristics, especially of the face. The notion of portrait draws on this convention insofar as a principal medium is precisely the individual’s body features. When other kinds of references are made to bodily character, they may be used as substitutes for body representations. Strathern, *Property, substance, and effect*, 172. It is in relation to other persons, invested with similar property rights, that we individualize land as a thing to be owned.

However, the deed not only represents efforts to individuate each person by identifying his body features, but the document of the deed itself becomes individualized. There is a serial number for each notarial sheet of paper issued, and most of the stamps in the document attest the uniqueness of the document or of the authenticated copy made of it. These acts accumulate and reproduce in the deed as an attempt to encapsulate the individual characteristics of the person and the document.

The features of the persons described in the deed are their bodily features; however such characteristics never render complete knowledge of the person in front of you. Their intrinsic qualities, internal motives, or kinship relations are not outwardly visible nor are they distinguished by these techniques. They are not part of the deed. The features included in the document are all established in relation with others that recognize in such features others as persons. It is using the same technique that land is also individualized as a “piece of land”, or a plot. It is in relation to other plots (by the external features of the plot), that the piece of land is individualized.

Just like persons, land as the object of the transaction is defined in the deed not by its internal qualities, such as the number of things found on it, unanimated (rocks, air or water), or animated elements (flora and fauna); nor by the constitutive elements of nature itself (oxygen, nitrogen, or carbon) that accounts for what land is made of; nor by the kind of relationships taking place within the plot of land (kinship relations, plants human relation or animal human relationship, among other), but rather land is individualized using the same relational techniques that we use to distinguish ourselves as individuals. The plot is distinguished relative to other plots of land by

establishing its boundaries and limits which are demarcated in relation to other people's plots, also written into the deed.

The content of the second clause of my deed (Figures 8 and 9,) which includes the plot limits, its dimensions, and its previous legal history, are ways to divide the land, unified or subdivided using the same relational technique use to individuate body/persons. According to this approach, the land is assumed to be comprised of pieces. Just as we use artifacts like signatures, photos, ID cards, or medical history records to distinguish ourselves, for land we use documents such as previous deeds, property registration recordings (a very similar device to the person's medical record), and property tax certificates among others.

The deed of ownership to the land is formalized once the seal is placed. The imprinted royal seal can only be obtained when the appropriate legal procedures are followed, the parties to and the land subject of the transaction are identified, the legal status of both parties and land are examined, and the particular rights and entitlements have been established. The act of converting the transaction into a public deed (meaning the physical act of recording the transaction onto notarial paper and pressing it with the royal seal) makes the document of a special kind. It solidifies this particular event in which land ownership is created. The deed document becomes also an individual object that represents a particular plot of land. Land ownership becomes a particular kind of relationship solidified by a legal technology such as the deed. The deed document bearing the royal seal becomes the identification card for the plot of land.

As we have said this particular relationship is established in a particular spatio-temporal setting, by authorizing the transaction between parties over an individualized

object (a piece of land) to which the notary, as witness in representation of the community and invested with the authority given by the State to authorize such transaction, bears witness and attests for its validity. The relationship is solidified by the issuance of the new public deed, thereby bringing into existence the piece of land as a legally recognized entity. The land emerges not only as a physical entity but as a mental representation from which new property relations such as encumbrances, or other entitlements could be ascribed regardless of the physical constraints and limitations found in the biological world.

Land in itself does not necessarily show the physical boundaries that attest for ownership. Fences and landmarks can vanish over time. There is no such thing as a plot of land in the biological world. However, something very different is the abstract representations of land found in cadastral maps¹⁷⁶ or recorded in legal documents. Through the deed we achieve the legal individuation of land as a thing we can own, and as an object which we can divide infinitely into parts or it into different entitlements for separate ownership or exchange.

When we divide land into parcels for ownership, we remove ourselves from the fluidity taking place within the biological world, and in turn become controllers of it, and we thereby establish the potential for new relationships with the land to occur within this legal space.

¹⁷⁶ James C. Scott, *Seeing like a state: how certain schemes to improve the human condition have failed* (New Haven: Yale University Press, 1998), 36.

In private law, Property and Contracts are combined in several ways affecting the shape of property entitlements and the allocation of power among economic actors.¹⁷⁷

In the case of land tenure, it is by virtue of the deed that law recognizes the particular relationship that creates land as a thing to be owned. By setting boundaries on the piece of land in relation to other people's plots, land is individuated and a new space created. Then property leaves the space to be filled with infinite numbers of relationships that can take place within this space (think of the infinite number of relationships between persons, persons and animals or plants within that space). However, Property not only leaves to contracts to solidify other types of exchanges that take place within this space (e.g. a sharecropping contract), but allows exchanges over this space (e.g. a lease contract to transfer some of your entitlements as an owner). In the case of land tenure, it is in the formalization of ownership through the public deed where this pact, where Property and Contracts mutually reinforce each other, is achieved.

All kinds of relationships take place inside this space and law has a set of different ways of managing them. Law creates different entitlements to be distributed; regulate new relationships, such as, zoning law, the right of passage, or servitude; applies statute of limitation, and handles personal claims as in Torts. Thus, law produces new relationships, in a need to organize the unpredictability of the biological world

¹⁷⁷ "Within the domain of "private law," moreover, it is not only property. Property and contract are mixed together in all sorts of ways which affect the shape of property entitlements and the allocation of power among economic actors. In today's legal order, lawyers are adept at disaggregating ownership rights and transforming them into contracts between various parties for sharing in the use or risk or return on an economic activity. The reverse is also possible – transforming a contract right into something to own or sell. Much of our current financial architecture has been constructed in this way, including the parceling out and resale of mortgage debt in numerous ways. The private law regime which is used to reorganize entitlements back and forth from property to contract may, as a matter of policy, make these rearrangements more or less difficult, faster or slower." In Kennedy, "Some Caution about Property Rights," 27.

solidified in this particular relationship of ownership. Law creates new relationships to prevent threatening our mental representations of what is understood to be ownership of land. In other words, law tries to maintain the centrality and self-referentiality of the circular shape portrayed in the seal. This effect of the seal anchors our view in the fixed image and makes us neglect the outside. When a particular perspective about land is solidified it opens up to a new number of relationships that maintain the stability of our previous mental construction and create new relationships emerging out of those we solidify.

The Crown-the Public

The solidification of a relationship that renders the land as a thing to be owned is impossible without the authority conferred to that one who stamps the seal on the document. This individual bears witness that the transaction actually is happening and, simultaneously, enforces it.¹⁷⁸ Such authority is conferred by using the same technology that solidifies the interaction between the parties approaching the notary to formalize the relationship of land ownership; both processes take place precisely at the same moment in time.

Besides the circle, the crown stands out as the second element distinctive of the figure in the wax seal (Figure 13.) Again, the relationship that formalizes land as a thing to be owned through the sealed deed cannot exist without the authority that enforces such

¹⁷⁸ Bearing witness and validating its authority are both actions intrinsically related to each other in the process of formalizing land ownership. The State (as a witness) is able to enforce the relationship that allows creating land as a thing to be owned. In Rome land transfer of *res nec mancipi* (italian land amongst other things) usually occurred in the act of *Mancipatio* where seven witnesses stamping the seals bears witness to the transaction contained in the a document known as the *Emptionale Instrumentum*. See Lawson, *The Roman law reader*, 56.

a view.¹⁷⁹ Just as the signatures, fingerprints, the notarial stamp, or the marital status of the persons involved are the techniques by which each party and the person of the notary are individualized, the royal seal in the deed identifies the State (Figure 12). The seal governing the entire composition of the deed bears the national coat of arms of Colombia, which attests for the recognition and identity of the state.

In the context of formalization of legal ownership of land, the authority that confers land its character as a thing to be owned stems directly from the state. In other words, the coat of arms of the royal seal in the public deed does not correspond to the identity of the notary or the parties, but rather it corresponds to the identity of state. This remark will be of great significance when exploring the problems about land formalization in the two rural field sites of my research in Colombia. Just for now, it is accurate to say that the process of formalization of land ownership has played a key role in the Colombia internal conflict as the nation state tries to consolidate its control over the territory.

The state, if not the owner (or assumed owner when private titles are not clear), is the final authority that stamps and solidifies this particular relationship between private owners. However, just as the parties that attempt to formalize the relationship of land ownership need the intervention of the state, the authority of the state equally feeds on those parties when they reach out to the state and use its means. The authority of the state is created as the parties recognize the state as a different kind of person, bearing a different kind of seal, enjoying a different role, possessing a different kind of

¹⁷⁹ In this context I am thinking of authority in the broadest possible way. I refer to the State but also to other persons that represent authority: the neighbor association, the king, the Paramilitary. Authority under this view is also created when a relationship between persons is understood by all in a similar way.

knowledge, and having different capacities. It is ultimately the belief in the state as a different kind of person what allows the state to enforce the relationship that creates land.

The state is interested in the formalization of land ownership because it is essential for its own existence. By formalizing the relationship of ownership the state can collect monies coming from taxes on land, consolidate and organize its territory, and also, control the access and movement of its citizens. According to this view, the state can maintain its own authority by recognizing ownership over land. Therefore, the state is able to continue validating its authority as long as it can guarantee ownership over land to a citizen, to itself or to a group by establishing collective title. As stated above, the formalization of land ownership through the public deed is accompanied by a particular experience of recognizing the state as person possessing a different quality than the individual person.

In this process, the spatial setting of a notary office allows experiencing how the state operates and exercises such authority. This spatial arrangement of the notary accounts for a particular experience where the state exercises its authority through formalizing some of our most important life actions. As in other spaces of law making¹⁸⁰ the “house” of the notary,¹⁸¹ with its formal arrangements, is the house where documents are made, and people are made into documents as in other bureaucratic offices (Chapter 2). These houses are equally occupied with typewriters, folders and papers, printers, photocopiers, computers and ink cartridges for finger printing. However, the

¹⁸⁰ Latour, *The making of law*.

¹⁸¹ Most notary offices in Colombia are private houses reconditioned to receive daily visits from the public.

notary house is also the house where one goes to get the correct stamp or seal. The house of the notary is the house of seals and stamps.

Parties, either with a lawyer or on their own, are required to partake in the formalization regime taking place at this house. Visitors to the notary must undertake a range of different actions before they can culminate their transaction at the house. When entering these houses, they carry new and old documents (old deeds, certificates of registrations, real property tax certificates, or copies of the identification card) under their arms; staff and visitors spend hours going over document drafts, often scrutinizing them and, in order to record an action at the notary, a citizen must bring his ID, leave his fingerprint and signature on the paper, and pay the sum of money required to cover the notarial fees charged for each transaction. These are all actions through which parties reaffirm the state's identity as a different kind of person.

At the house of the notary, other forms are also strictly followed. For instance, oaths are taken with observance to formal requirements. In some cases, documents are read out loud in presence of the different parties, witnesses, and the notary; everyone must record their presence in the event. Moreover, dress codes are expected to be followed by attendants to the house of the notary.¹⁸²

Those working at the notary are extremely perceptive to these forms. Lawyers, who are often the most assiduous visitors to these houses, move with ease around the formalities used at the house. Notary staff perceive lawyers as daily-life actors, just as they perceive legal documents as essential parts of their daily activities. Lawyers are familiar with the set of formalities taking place at the notary: they know the

¹⁸² Bourdieu, "The Force of Law."

requirements needed to craft valid documents and how to speak and behave at the house. All parties often acknowledge this familiarity and reinforce the role the lawyer must follow in this process of formalization.¹⁸³

Just as the notary stamping her hand onto the folder at the moment when she explained to me that land ownership did not exist in absence of a public deed, the importance placed in formal arrangements at the notary allows for a very particular perception of the world. Leaving your fingerprint or signature stamped on a piece of paper, taking a solemn oath in presence of the notary or reviewing a legal document to formalize a particular relationship are all actions that earmark what happens inside these houses. They are techniques implemented at this house to formalize life events in presence of the state.

One's own success at the notary is measured by getting the right stamp or seal in the document. This time the seal is not displayed in the national coat of arms hanging on in the background wall of the office, or as part of the national flag decorating the room; instead, it accompanies the paper that that consolidate some of the actions most important in our own life cycle. Notary stamps are not only found in land deeds, but in marriages and divorces, births and deaths certificates, or inheritance documents. The state requires all these events to get formalized at the notary. Once the papers are stamped, they begin to convey a whole new meaning all together.

¹⁸³ In interviews I conducted with notary staff even if I said I was a lawyer, it was clear I was not one of them. I failed to dress accordingly; I loosely followed the codes and language; the kind of questions I asked were certainly at odds with the kind of questions a lawyer would ask. All reasons to place me outside the forms of the house. However, *campesinos*, who did not question my status as lawyer, frequently call on me to accompany them to the notary when an important transaction was about to take place, as if my presence could be regarded as both a sign of compliance with the formalities of this house, and also a guarantee for the person involved in the transaction of being supported and guided by a lawyer.

Through the formalization of this particular relationship with land that happens at the notary a double process develops and consolidates. Parties and documents are individualized, and the parties mutually recognize each other and recognize the states as a different kind of person. But, for such recognition to take place, a differentiation between persons must be clearly enforced. Seals are the techniques that guarantee formal individuation and ultimately allow for this kind of mutual recognition. In the first place, between the parties, who are the citizens involved in private relationships and entitled to own land. Secondly, a recognition of the state and the institutional and legal arrangements that constitutes it as a different kind of person with different capacities, responsibility and having a different kind of knowledge.

Maintaining the private-public divide

As suggested above, such legal arrangements grant the state with its authority and allow the notary, as representative of the state, to authorize and give a binding force to this particular relationship between persons. Through the stamping of the seal onto the public deed, the relationship between the Private and Public orders is materialized. In the solidification of a particular relationship such as land ownership, the mutual recognition of the individual person and the state as two separate persons gets set into motion. This difference and mutual dependency between the public and private realm allows to create land as a thing to be owned; in the image of the royal seal such relationship is portrayed by its two most distinctive interrelated elements: the inside/outside divide created by the circular shape and the coat of arms of the state.

These two elements constitute the trademark of the seal, both engraved into the solidified wax (Figure 13). The framed circle creates the space onto which the person's mark is displayed, producing the imprinted image left by the seal. Such image is characteristic of the conceptual framework we maintain and work with when thinking about law in terms of a division between public and private orders.¹⁸⁴

The seal's function is to maintain the stability and self-referential quality of its image; this is the seal's optical effect above-mentioned. Just as the printed image of the seal invites the eye to look at the center of the circular shape and recognize the person's mark, an important part of the activity of lawyers is become experts in maintaining the self-referentiality of the conceptual framework that operates within law. In the same fashion, the seal helps maintain an attachment and self-referentiality in the way in which we construct our knowledge of law. In fact, lawyers are experts in creating legal fictions to keep this self-referentiality alive.¹⁸⁵

Our job as lawyers is to take the messy reality and transform it into new forms, new definitions, new rights and duties, which are creations that would not undermine the self-referentiality of the conceptual image of the law. Here it is worth recalling the professor's advice at the notary: "Forget about the sales contract the *campesinos* subscribed to transfer land (a failed promise to sell due to the lack of public deed) and instead advice *campesinos* to apply for an adverse possession remedy so that they can

¹⁸⁴ I think of the solidified mark left by the seal in the formalization of land ownership as an example of the process of reification of knowledge mentioned by Strathern. "By reification I simply intend to point to the manner in which entities are made into objects when they are seen to assume a particular form (gift, exchange). This form in turn indicates the properties by which they are known and, in being rendered knowable or graspable through such properties, entities appear (in Euro-American idiom) as things [...] We should not lose sight of the fact, then, that the effort of knowing which goes into making an analysis or model of the world appear in a written account is a process which involves reification". Strathern, *Property, substance, and effect*, 13-14.

¹⁸⁵ See Annelise Riles, "The legal Fiction: Technical Hope at the Center of Capitalism", forthcoming.

gain ownership.” That is what a competent lawyer vested in civil law claims over land ownership will recommend, but what happens with the real intention *campesinos* had when celebrating their sale? Again, the professor at notary advises us: “if you show the promise to sell, if they [*campesinos*] mention this transaction to the judge, they risk not winning in adverse possession because they recognize ownership to somebody else.” And he continues by arguing that “One must pretend that such a sale between *campesinos* never happened.”

As lawyers, we seek within our own conceptualizations of law to organize the world before us; this is what I will call “our mental imprint,” which gets extrapolated to the image imprinted by the seal. We strive to look for solutions to problems that will maintain the consistency of the legal order and in this particular case, of land ownership. In situations that challenge our own conceptual framework we take any necessary steps (fictions, leaps of faith, or even choosing to forget reality/ or what we know), in order to keep the self-referentiality of our legal mental imprint in place.

The seal, understood as a legal technology characteristic of the way we think about law, is composed by the interrelation between the private and public orders. In the seal, the relationship between the crown and the inside/outside divide of the circle is not precisely defined, but we can visualize and understand them as two separate and distinct elements. At the same time, we perceive these two parts at once and as entire whole in the visual process of recognizing the imprinted image. In legal thought, we perceive the relationship between the private and public orders in the same manner. Our conceptual image of legal knowledge is constituted by the public and private order as two separate domains and, at the same time, we perceive them at once and as

an entire whole so as we can recognize the whole image of the law; our legal thinking often operates under the influences of the imprinted image left by the seal.

Consequently, a question that has captured the imagination of some legal scholars is where to draw the line separating the public and private orders, or even if it makes sense to draw a line between them at all. In Legal Theory, more broadly, the relationship between private and a public order has long been addressed. The imbrications of private arrangements and the public enforcement of private rights has been the object of prolific intellectual activity since legal realism,¹⁸⁶ up until today in a wide variety of areas.¹⁸⁷ In Property, Contracts, Torts, Global Governance, Human Rights, and Private International Law, we constantly observe certain kind of relationship between both domains--whether they challenge or complement one another-- to gain new insights about their multipronged relationship or, on the contrary, to dismantle the distinction between them.

Moreover, such interrelation is also performed under the techniques we use as lawyers to do our craft. The way we set up institutions, formalize actions, follow certain codes, or conceptualize our thinking by using technical language, become tools we use to maintain the self-referentiality of the law. In the context of the public deed that formalizes land ownership, this public and private interrelation is defined by the stamping of the seal onto the deed document. The deed once it gets stamped becomes

¹⁸⁶ David Kennedy explains this mutual dependency of orders in crafting policy. He uses Hale's idea of rights dependency of the State and Morris Cohen conception of private property as determining the future of goods available in the future and therefore causing and impact in shaping the sovereign. In the end Kennedy argues "we must recognize that the private legal order is shot through with public policy commitments, relies upon the state for interpretation and enforcement, and never controls access to resources in the absence of public law restrictions or permissions". Kennedy, "*Some Caution about Property Rights*," 21.

¹⁸⁷ The multiple debates of public and private law outside Property law, and more precisely the formalization of land ownership, are outside the scope of this dissertation.

the agreement under which we maintain and accept the cognitive constructions fabricated by the law. In other words, by gaining the seal we commit with our own knowledge practices to reproduce the mental imprint constituted by the interrelation of both orders.

Threatening the Stability of the Seal

The stability and self-referentiality portrayed by the legal mental imprint is constantly being reworked as phenomena in the biological world make us aware of the highly unstable character of our own knowledge constructions. In Property Law, the stability in the conception of land ownership enforced by the imprint of the seal, as that which presupposes the exclusive control of individuals over things, and the recognition of the state's authority as having the competence to authorize and enforce such arrangements, has been challenged in a variety of ways.

Within Property Law there are a number of different critics to this almost instinctually commonsense conception of ownership and property that defines the legal and political sphere within which individuals are free to pursue their own private agendas and satisfy their own preferences free from external interference.¹⁸⁸ Critical property scholars (I will sometimes refer to their approach as Dynamic Culturalism to property law) have started to undermine the centrality of this particular conception of property as keystone piece in the engineering of the social and legal system.

¹⁸⁸ See a genealogy and critique of such conception in Gregory Alexander, *Commodity and propriety: competing visions of property in American legal thought, 1776-1970* (Chicago, Ill: University of Chicago Press, 1999).

Their efforts seek to position an alternative view of property to that advanced by Utilitarianism and Liberal Contractarian models of property.¹⁸⁹ For them the individual, besides satisfying individual needs, is also understood as embedded in a particular cultural context and socially constituted in nature. Their approach highlights the plurality of persons, groups and communities. In their work they have provided counter examples to the assumed values inherited in the dominant conception of property that think of property as mechanism for the preservation of order and stability.¹⁹⁰ They have established property as a dynamic institution rather than a fixed set of entitlements rooted in abstract morals and principles to which the state or community must answer,¹⁹¹ and have emphasized the sociability of human beings over a profit centered motive that is underlined in the dominant conception of property. The core of the Dynamic Culturalist argument attacks the unidirectionality in the mode of analysis that has dominated Property Law, and its most influential line of recent work in Law and Economics.

While some of them strive to forge a different idea of property, one that does not necessarily imply exclusion to others to satisfy individual needs but an idea of property that can press forward the inherent value of freedom and happiness each individual is able to achieve.¹⁹² Others have gone as far as to question the idea of property as essential to human condition, as key to the system of property rights

¹⁸⁹ See for example: Gregory Alexander and Eduardo Moisés Peñalver, *Property and community* (Oxford: Oxford University Press, 2010).

¹⁹⁰ Eduardo Moisés Peñalver and Sonia K. Katyal, *Property outlaws: how squatters, pirates, and protesters improve the law of ownership* (New Haven, Conn: Yale University Press, 2010).

¹⁹¹ Singer, *Entitlement*.

¹⁹² Alexander, *Commodity and propriety*.

triggering a certain number of entitlements and privileges, and the idea of property as fulfilling an organizational role in legal thinking.¹⁹³

This group and others in Property Law¹⁹⁴ have worked towards exposing the common assumptions and inherently persuasive arguments assumed when thinking about property¹⁹⁵. However, in showing the highly unstable character entailed in our conception of property some of their own assumptions still remain under-theorized.

Dynamic Culturalists, in their efforts to position an open and flexible idea of property, still need to refine some of the analytical tools used to destabilize the dominant notion of property and challenge the self-referentiality of our mental imprint of law and ownership as constitutive element of legal engineering and its central role in legal thinking. In their position there is a strong argument for privileging the role of: local custom, sociopolitical conditions, and environmental and public concerns, among others, as necessary in defining the idea of property.¹⁹⁶ However, their idea of “community” “marginal” or “local culture” rely on assumptions about culture,¹⁹⁷ freedom, the assumed constitution of our individuality,¹⁹⁸ or our own presuppositions about happiness,¹⁹⁹ that other disciplines have made their intellectual problem to study. That which is embedded in the use of such ideas already questions the possibility of using these categories across different contexts or situations.

¹⁹³ A. J. Van Der Walt, “Property and marginality” in *Property and community*, Alexander and Peñalver, 81-84.

¹⁹⁴ Rose, *Property and persuasion*.

¹⁹⁵ I share the commitment with these authors, but I use a different method to approach marginality or cultural differentiation.

¹⁹⁶ Gregory Alexander, *The global debate over constitutional property: lessons for American takings jurisprudence* (Chicago: University of Chicago Press, 2006).

¹⁹⁷ Roy Wagner, *The invention of culture* (Chicago: University of Chicago Press, 1981).

¹⁹⁸ Marilyn Strathern, *The gender of the gift: problems with women and problems with society in Melanesia*. (Berkeley: University of California Press, 1988).

¹⁹⁹ Amartya Sen, *Development as freedom* (New York: Knopf, 1999).

Their efforts to advance work on what has been often neglected among property scholars when thinking about property law, in particular their demands of a contextual rather than a deductive logic, does not necessarily need to be ascribed to the context of American legal academia if the contextual is taken seriously. Their insight and contributions could have tremendous impact in other contexts where property is still dominated by the unidirectionality of the dominant approach to property. However, in their work they need to take into account such specificity in ways that challenge the paradigmatic view of western legal thought where concepts such as “culture” “marginal” “poor” or “excluded” become the placeholder terms to incorporate otherness and differentiation into the picture. They could also examine the materials and methodologies they use, whether they are legal (case-law, statutes) or empirical data (media news, literature or interviews) and critically assess how alternative conceptions of property are portrayed in such materials and what their blind spots may be.

Their boldest questions and statements on topics advancing a key issue such as land ownership are concerns addressing a number of different topics. These concerns include: the legitimacy of the doctrine of first possession in North America based on the principles of democracy and equal opportunity;²⁰⁰ land redistribution models based on a broader moral framework sufficiently capacious to encompass the value of personhood, the demands of liberty, and the important goal of enhanced social welfare;²⁰¹ the role of the government to vigilante and provide institutional support to

²⁰⁰ Joseph William Singer, “Original Acquisition of Property: From Conquest and Possession to Democracy and Equal Opportunity” *Indiana Law Journal* 86 no.1 (2011): 763-778.

²⁰¹ Eduardo M. Peñalver, “Land Virtues” *Cornell Law Review*. 94 no. 4 (2009): 821-888.

maintain the model of redistribution;²⁰² and finally, the political and social power mobilized by squatter leaders who advance and recognize alternate property rights.²⁰³ Their consensus is to reinforce local understandings of property, the importance placed to communal relationships in defining property, or advocating for the inhered right to not be excluded.²⁰⁴

Their project is in part still dominated by the aesthetics of thinking within the constraints of western legal thought by trying to accommodate such experiences to formal conception of ownership. If we want to challenge the dominant conception of property we ought to think about property out of the mental imprint of legal knowledge characteristic in western legal thought, or in other words, to conceive alternative ways in which to break with the optical effect portrayed by the royal seal I have described. To contest the legal mental imprint is to challenge the way we construct our own knowledge about property.

Embroided edge

In the royal seal, the space in between the outside of the circle and its amorphous exterior is usually filled with an engraved embroidered edge (Figure 15.) This ancient barcode serves as a security device in the seal, most often in the form of a legend or a very detailed set of fine lines, which makes the piece harder to counterfeit. This security mark assures the authenticity and the original identity of the seal's bearer.

²⁰² Alexander and Peñalver, *Property and community*.

²⁰³ Peñalver et al., *Property outlaws*.

²⁰⁴ Alexander and Peñalver, *Property and community*

Notice that in the notarial seal of the Deed (Figure 12), this feature has taken over the amorphous exterior, making the distinction between the amorphous exterior left by the mark in the wax and the image created by the seal almost unrecognizable (This is not deliberate. Over time we have lost the awareness that owning a piece of land is the result of solidifying a relationship between people; owning a piece of land feels natural to us as a result of the mental formalization portrayed by the seal which makes us focus in the image imprinted rather than its amorphous exterior). Indeed, in the seal of the public deed the amorphous shape has become an encrypted embroiled mark typical of the notarial paper on which deeds are issued. When I asked a notary about the interesting shape of the notarial seal on the notarial paper, she emphatically assured me that the seal was in itself a security mark of the notarial paper in which deeds are issued.

This reveals a key element in the legal technology of the seal. The seal as a technology that we use to individuate ourselves, and, as we have shown until now, also use to individuate land, can be manipulated. Just as fingerprints can be stolen, signatures forged, or IDs falsified. Seals can be copied and paper deeds manipulated. Despite the continued effort to individuate ourselves from the inside, such endeavors are never fully completed or achieved with the use of such technology.

As technology can be breached, duplicated or manipulated, the possibility of creating a counterfeit copy of the technology comes in. The properties of individuation, identity and recognition are all inherent in the Seal but they are able to produce their full effect only when such technology is regarded as authentic and we can establish that the seal used belongs to its original owner. Therefore, such technology must have the mechanisms to preserve its unique and original identity, as well as to maintain the

identity of the seal's bearer; the seal must have within it a mechanism to preserve its authenticity and uniqueness as well as to preserve the original authorship of the person it represents.

Similar security mechanisms that attest for its uniqueness and originality are displayed in the public deeds under which land becomes a thing. Indeed, the deed contains different security marks which make it difficult to manipulate or illegally reproduce. Apart from the notarial seal, now considered a mark on the notarial paper that identifies all public deeds (see public deeds examples of Figures 10 and 11,) all public deeds are filled with hyphens which complete each of the rectangular boxes that are not fully occupied by typewritten letters. Such hyphens are printed in order to fully complete each rectangular box and avoid any additions or modifications in the text of the written deed. Moreover, the number of boxes without written information is counted and recorded in order to avoid illegal additions to the text, and guaranteeing that the document remains untouched.

Other devices displayed in the deed attest to its uniqueness and originality. Each notarial page is issued with a unique number and its records are kept at the notary. This is the serial number you find on the top of each notarial page highlighted on an elliptical shape outside of the margins of the deed. In addition, in case of an authenticated copy of the original deed, each page of the copy is signed, stamped and numerated by the notary. In fact, the original deed is always kept by the notary. Parties are given an exact copy of the original indicating the cases in which it is a first copy²⁰⁵ or another copy from the original.

²⁰⁵ Such a copy has especial effects as it serves to fulfill certain obligations under Articles 80 and 81 of Decree 960 of 1970.

Sealing the union in the document

The security mark or bar code engraved on the seal acts as sealing the transaction in the aesthetical analysis of land formalization we have advance in this chapter. The relationship that turns land into a legal thing is solidified only when the seal is authentic and unique. The spell and magic of the seal in land ownership occurs when the notary authorizes the public deed by providing the paper with the official seal, or in other words, when the public deed is issued.²⁰⁶

As we have said before, the spell and magic is so embedded in our own mode of thinking about land ownership that we tend to think of land as something already divided into pieces, making it difficult to break out of with the optical effect portrayed by the seal. The seal's engraved mark makes us focus our attention on the image that is left by the mark, that is, the interrelatedness between the inside/outside of circle and authority, and makes us lose perspective on the temporality of such construction. The authentic seal finalizes this peculiar relationship between persons in which through the solidification of particular relationship land is individualized and made into a thing; that later can be traded, circulated, exchanged, regulated, or limited.

But just as we have seen how the seal individuates the thing, the deed by the effect of the seal becomes a particular kind of object. The document describing this particular relationship among people with the biological world around us becomes individualized as a unique object that incorporates the land made individual. Among

²⁰⁶ The difference between the official and non-official seal found in the *Carta venta* (chapter 2) is crucial for explaining the problems with illegal land titles. Much of *campesino's* efforts to gain formal ownership can be conceptualized as obtaining the right kind of seal.

all other documents in the folder this one in particular bears the seal that recognize land as a thing to be owned highlighting the importance of the document. This document comes to embody the piece of land, not only solidifying a particular relationship, but also embodying the piece of land that takes a central role in creating other kinds of relationships over or within this space or territory. This document is important for a vast number of transactions as described before (Chapter 2). It provides land its status as a legal thing; land becomes individualized as a unit, as a thing, creating the pathway to new ways of relating to it.

The document once stamped, loses the spatio-temporal character of the relationship contained in it. The seal freezes up time and space to create new space. The sense of perspective in the relationship added by its aesthetical analysis is gone, and a piece of land becomes a permanent durable thing subject to ownership. The public deed document, once stamped, acquires a whole new meaning as the embodiment of the permanence and concreteness of land seen as a thing. It is this particular relationship with the land that is engraved in our own mental imprint. To understand land as a thing to be owned is part of the formalization of our own knowledge.

New relationships are set into place and as the public deed they are also embodied in new documents. As the notary says, the deed never comes alone. In the same folder of the title there are other documents that at the same time both re-solidify this relationship of land ownership, and create objects under which new relationships take place. Just consider the number of additional documents and permits that accompanied the public deed in the green folder I have described: cadastral tax certificates, a survey map, and an Incoder's letter of authorization to sell.

Also take a look at the number and different kinds of stamps in the deed (Figures 8 to 11). The technology that solidifies particular relationships is technology that self reproduces (Chapter 2). These stamps are attempts both, to re-solidify this particular relationship that individuates land as a thing, and at the same time embody and start new relationships. All these documents become independent objects or units of analysis.²⁰⁷

There is something remarkable about sealed documents besides embodying or producing within them new relationships that by the seal's effect become solidified. The seal produces in the sealed document the sense of belonging, uniqueness and authenticity necessary for these objects to circulate and partake in new exchanges. Such objects also share some of the features analyzed earlier for the sealed public deed. The compelling effect of experiencing the private and the public orders interacting with one another under this technology; a technology that contains within it certain security devices to assure its originality and authenticity. Think for example, of banknotes, diplomas, birth certificates, certificates of naturalization, car titles, apostilles, passport stamps, among others. All are documents that, by the act of the stamp, become new entities or make persons acquire new status. These objects are filled with powerful meanings drawn from the relationships they attempt to solidify. These objects circulate; they become recognized by others and partake in new exchanges. These sealed documents in themselves carry great value.

Comparisons between seals and stamped documents containing great value are elusive, money perhaps being one of the most interesting examples²⁰⁸. In the case of

²⁰⁷ Riles, *The network inside out*, 33.

²⁰⁸ Unlike money the land title contained in the public deed has a sense of positionality or referentiality of the thing owned, by identifying both the parties and the authority that authorizes such transaction.

the struggle of *campesinos* to gain land ownership, there are several relationships between the public deed of the land and money. They are connected in very interesting ways, as will be spelled out in detail later in the description. *Campesinos*, who seek the formalization of land ownership, look at the deed as an object that allows them to participate into new exchanges. To obtain the legal title is to enter into a particular kind of exchange, one in which you exchange your title of ownership for other kind of paper, money in this case. To *campesinos*, those that know how to make the deed, those that know the technicalities on how to craft the document, are also those who know how to make money.

Hiding Something of Great Value

In the offices of notaries I visited, I found experts in the craft of making deed documents hiding from the public eye, just as in old times when seals were used to keep important messages out of public knowledge. At a meeting with a Notary from the capital, I was able to gain access to one of these hidden chambers, not an easy thing to do at a Colombian notary these days. I was struck to find out that in the basement of this notary there was a large closed room with no windows to the outside. The room contained ten people seated at desks arranged one behind the other, as in a classroom setting. This was an entire chamber that ran underneath the two-story building of the public notary. Public access to this chamber was forbidden. In fact, officials at the notary hardly mentioned such a chamber existed. This was an entirely different world, a dark, air-conditioned, quiet, neat environment, so different from the hectic environment of the floor above, which was crowded with typewriters, stacks of papers, visitors, lawyers, phones and documents. It is in this secret chamber out of public display where the deeds are made. This tidy and well-maintained environment

contained only a series of desks, a chair and a computer at each desk, and a person working laboriously behind it. This is where the making of the deed happens. These persons are the deed makers, those that design the content of the deed. They produce the document that is later formalized by the parties and the notary.

On their computer screens, the deeds are drafted. Their job is to review each clause in detail. They pay close attention to each single word (either common or technical), assuring that each is as exact as possible. They also pay attention to the aesthetical shape of each word, a capital letter, in bold, divided by a hyphen to avoid stepping onto the margin. They also review and compare each of the documents used to craft the deed: the national identification card of the parties involved, previous deeds, or certificates of registrations. They place a special emphasis on such details as addresses, registration numbers, numeric measures, along with other details that attest to the authenticity and validity of such documents, in order to craft the new document. They are the people at the notary who keep a private record of the serial number issued for each page of the deed. The serial numbers of the deed are written in full text in between brackets to avoid forges in the numeric representation. They are the people who fill each blank line of the document with hyphens. Each deed is a piece of work in itself. Its making is very similar to that of making a banknote. Each mark, the quality of the paper, the meticulousness required in its wording, are all matter of tremendous importance.

These officials at the chamber are aware of the uniqueness of their crafting. They are also aware of the unique value of the document, and of the consequences if such technology is massively reproduced. Each page of the deed is then carefully scrutinized by the notary or the secretary, and then it is reviewed by the parties, and

their lawyers to account for the technical details. Then the deed is read aloud by the notary. Both the parties and the notary sign it. The notary stamps the deed, the parties then stamp their fingerprints, and the document of the public deed is born. An authenticated copy is then immediately made for the new owner to have, each page signed and stamped by the notary attesting to its authenticity and that it is a faithful copy of the original.

There was another room next to the chamber where the deeds were made. It is a temperature-controlled archive where the original deeds are kept and preserved against the passage of time. The originals are always kept in these depositories at notaries. People have authenticated copies of their title but never the original. However, whenever I asked to see a title belonging to a *campesino*, whether it was a real deed or some other paper that they thought gave them ownership (such as a *carta venta*), I always had the feeling of asking for something that they always kept hidden and well stored, just like the original at the notary.

It was only after we had established some kind of relationship of trust, or when *campesinos* thought I could help them to understand or give them legal advice, or when they had some need for clarification I had managed to point out during our conversation (division due to inheritance, Incoder's written permit to sell, unpaid property taxes, among some of the legal issues they were interested in gaining clarity), that *campesinos* would go into their house and get the papers to show to me. They try to preserve these papers as well as they can, folded and stored for years, sometimes in plastic bags tucked into wardrobes, behind doors, hung on nails placed in one of the corners of a room, or in between palm leaves that serve as the roof (Chapter 3.) These documents are well-kept and are valued as important possessions.

The imprint-Where I move forward

The amorphous exterior, what is lost in the notarial seal of the public deed, is precisely that awareness of the unstable, temporal and problematic construction that entails thinking of a piece of land as one of the most basic things to be owned by people. The same is true for how we construct our knowledge trying to comprehend the biological world that surrounds us, placing us in control of it, rather than within its flow. Land ownership is created as consequence of very particular relationship between persons. The idea of owning a thing called a piece of land is the solidification of a particular relationship with the world we intend to comprehend.

Enough has been said about the multiplicity of meanings attached to land outside of western legal thought. A whole current of sociological and anthropological research in the 60s and 70s has fully documented multiple accounts. The next chapter is not concerned with portraying the *campesino*'s worldview as radically different from our own; that has been emphasized enough. My attempt is different. I will provide a narrative on how different actors (with emphasis on the experiences of *campesinos* dealing with access to land in the two rural field sites of my research) interact with the technology of the Seal, in particular with the sealed document which grants them title to land ownership; such technology is understood as the technology that helps shape and construct the current understanding of land ownership.

The royal seal found in the deed, denotes agency in itself. There is a certain kind of performativity taking place. Not only does the stamping of the seal in the document change the substance of the document altogether, but in the marking of the seal we see

our own actions taking place. The seal not only solidifies a particular relationship with others by making land a thing, it contains a set of actions, movements and actors in its making.

The story of *campesinos* attempting to acquire land using legal means could be told in the description of *campesino*'s getting the right kind of seal. Underneath, there is a particular way of understanding ownership and its consequences that *campesinos* experience in some cases with compliance, others with discontent, or in many cases with surprise to the unknown world of formalizing ownership. This story links up with NGO workers and bureaucrats expressed concerns and frustrations with this legal technology of formalization. Surprisingly, the complaints of both *campesinos* and NGOs regarding slow bureaucracy and an outdated system of formalizing ownership bear more in common than you might think, given the bureaucrats' own views and experience with this technology of formalization.

Furthermore, this story provides an account of how the actions of lawyers and notaries could be seen as making the seal visible to *campesinos* and educating them to see the meaning that law ascribes to such artifacts. As such, the story of *campesinos* will have more in common than what we think with that of any non-legal professional in interaction with these legal technologies of formalization.

In the next chapter I explore the relationship between institutional arrangements, regulations, state bureaucrats, *campesinos*, lawyers, and NGO workers with the technology of the sealed document of land title and the public deed that formalizes ownership.

CHAPTER 5

OUT OF THE TECHNOLOGY OF LAND OWNERSHIP: WHAT HAPPENS AFTER *CAMPESINOS* BECOME LANDOWNERS?

I want to refer to some specific cases experienced once the formalization of land ownership is achieved and *campesinos* become landowners. Such cases are not only problematic (in practice and theory) because of the disadvantageous situation they often create for impoverished *campesinos*, but also because these cases represent great problems and often raise concerns among other actors such as scholars, lawyers, policy makers, state official, technical staff (topographers or appraisers), activist groups and NGO staff involved in the process of gaining access to land for *campesinos*.

As illustrated in the previous chapter, the public deed, as the written technology that constitutes legal ownership of land, is a central piece of the whole apparatus engineered to secure legal ownership. The deed document is part of a larger process by which transactions over land are formalized under the law. In this process, the issuance of the legal title by the notary, as well as the registration of the title at the office of registration, are attempts not only to solidify a particular relationship with land but also to organize the interactions of different parties with land in a logical and orderly fashion.

As Susan Silbey states,

“law is a basic, constitutive attribute of our social consciousness. It is a particular way of organizing meaning and force,”²⁰⁹, and, as she points out, rather than looking at the way different actors use law to their advantage, or react against the laws they consider unfair, by focusing on the legal technology used by law to create land as a thing to be owned, I aim, again using Silbey’s terms, “to explore the mutually constitutive relationships between pragmatic policy recommendation of law in action and transcendental interrogations of law on the books.”²¹⁰ (underline added)

It is this legal framework that creates some of the problems that come up when thinking about land ownership for *campesinos*. Such legal engineering on land ownership creates a number of gaps, inconsistencies and blind spots to which different actors involved in the process of formalizing land act upon in a wide variety of ways. Rather than focusing on how different actors (sometimes with clearly different interests) use these different legal tools, the cases here provide examples on how different problems pertaining to land ownership are experienced in a similar way by multiple actors involved. What is remarkable, despite the different responses originated by the contact with the technology of formalizing land, is that these legal techniques become central for all of them. Thus, further regulation on land ownership is advanced with the intent to alleviate some of the problems while at the same time creating new inconsistencies.

The gap between the abstraction and the territory

²⁰⁹ Silbey, “After Legal Consciousness,” 359.

²¹⁰ Ibid.

It is something commonly accepted that the formalization of land ownership allows for a mental abstraction of what the land is and allows for different kinds of property or elements of property to be owned by different people. Whether we argue that assets or mental representations exist in the world,²¹¹ it is the technology of the written legal document that creates this perceived detachment between the mental representation of the physical reality and physical reality of the territory.

It is this perceived detachment which lays at the heart of the efforts made by law to engineer a system of land formalization that can overcome such gaps. Despite such efforts, the mismatch between the legal processes for land formalization that requires all transactions of the land to be recorded in chronological order at the office of registration and the transactions over land that happen spontaneously remains. There are some people who argue in favor of the possibility of overcoming such mismatch by having a “centralized and efficient system of property registration.”²¹² Moreover, in Colombia many socio-economic scholars performing research on land tenure relationships in rural areas have not only emphasized how the instrumental use of legal tools has been traditionally used to favor the powerful,²¹³ but also have made such mismatches, in concrete the often times out-of-date information on land registration in the country, one of the critical issues that has severely aggravated the delicate situation of *campesinos* in rural areas.²¹⁴

Additionally, in cases where complex operations over the land are undertaken, the detachment between the documented information and the actual reality on the ground

²¹¹ That title allows for capital to exist is an important point made by Hernando de Soto, *Mystery of Capital*. See Chapter 4.

²¹² De Soto, *Mystery of Capital*, 54.

²¹³ Machado, *La cuestión Agraria en Colombia*; also Reyes, et al., *Guerreros y campesinos*.

²¹⁴ Machado, *La cuestión Agraria en Colombia*, p. 15.

become also the concern for *campesinos* that very often are out-of-date with the paperwork required to formalize transactions over the land in their interaction with institutions. For instance, *campesinos* often find that the legal owners of the land are not necessarily known in the territory, or that the plot they think they own is not theirs because the title was never registered, or that they illegally subdivided or sold the parcels because the plot was previously burdened with encumbrances, or is under a seizure process. In my review of the legal documents of the two field sites where I did my research, I often observed that the people whose names appeared in the registration certificates or titles, were no longer occupying the territory. The people registered as owners left long ago, passed away or their whereabouts were unknown by *campesinos* in the territory.

However, not only *campesinos*, economist or this ethnographer are the only people who often perceive the gap created by the technology of land ownership and refuse it, ignore it, or accept it as unavoidable and instead try to think of new ways to update the information on the ground. The instability created by the technology of formalizing ownership it also experienced by those big land owners when trying to define the physical boundaries of their property based on written documents, or when subdividing plots of land. Similarly, lawmakers have recently tried to organize and legalize those plots of land taken by force from *campesinos* during the recent period of violence in Colombia. The recently passed land bill, known as “Ley de Tierras”²¹⁵ has attempted to establish a line of title preferences and reverse the burden of proof for ownership with the intention to facilitate the legal venues for victims of violence to recover or gain formal ownership of the land they lost. With this new law, it will be interesting to see how the state can comply with the institutional infrastructure to

²¹⁵ Law 1448 of 2011, passed by Congress on July 10, 2010.

implement such policy, and also how to define what documentary evidence should be given preference in order to solve disputes or claims on the ground. Many of these cases seem to be problematic on the ground given the flexibility and openness of the people's interactions in the territory.

Infinite division/fragmentation

As indicated elsewhere, land itself is usually seen as complete, regardless of the infinite times it may be divided.²¹⁶ Once the technology that allows for land to become a thing is in effect, the land experienced as completed and boundless is divided and subdivided using legal tools for such actions. For some people, the totality of their lived experience of the territory can be fragmented infinite number of times by law.

When such divisions are carried out, in particular, when a landowner dies and there is a subsequent process of inheritance, the perceived gap opened by the technology of formalizing land ownership becomes one of the cases that results as the most problematic to overcome by different actors. For instance, to inherit someone's land constitutes the event when property has to be divided between heirs at the moment of one's death. Even in the event that a legal owner does not make any transaction with the land owned during his lifetime, his property has to be transferred to others in the moment of his death. Very often it is in such moments that the parcel is divided up or fragmented to different people by a natural cause, and it is at this time when different problems arise for *campesinos* since land transfer is only valid by issuing new titles to each new owner.

²¹⁶ Riles, *The Network Inside Out*, 92.

Practices of subdivision and land fragmentation in Maria la Baja and El Socorro are common. However, both contexts present striking differences in their conception of land division and the problems associated with it. In Maria la Baja formal ownership is still poorly consolidated and private ownership loosely perceived because of people's constant fluctuation over private land and their lack of proper documentation, whereas in El Socorro, on the contrary, legal ownership of the territory has long been consolidated and plot fragmentation has quickly followed.

For instance, in El Socorro, *campesinos* of the rural district of El Libano have become legal owners and most land fragmentation has happened *de facto*. People who were formalized as owners by Incora more than 20 years ago slowly subdivided the land they owned (Figure 16.) Very often upon the death or some time before, the head of the family decides to divide the land among his descendants. The division is done informally according to the head's desires. Such division is not necessarily impartial, or according to the law; land is not allocated to each heir at the same time. Circumstances such as the specific needs of one of the heirs, the heir's degree of involvement into working the parcel, or the number of family members per heir, play a role in the head's decision.

In this context it is only after such *de facto* divisions take place, sometimes many years later, that *campesinos* in El Libano sought to legalize their plots. *Campesinos* not only delay the legalization of new parcels due to the fact that among the community the owner's wishes can be equally enforced despite the fact of not having the written deed, also they lack the money to undertake such legalizations.

At the moment that they attempt to legalize the divided parcels they find it difficult to deal with the set of regulations that forbid them from legally attempting such divisions due to the fact that by law, subdividing rural land below a family unit (known as UAF) is considered anti-economic fragmentation under Law 160 of 1994. Law 160 does not allow subdividing parcels under the UAF limit for a family to guarantee their subsistence. In order to formalize their *de facto* divisions and have their ownership recognized by institutions, *campesinos* need to resort to more complex legal venues by applying a new mode of rural property, such as “*hacienda campesina*.”

In this case, the legal solution consists of finding a way to bypass the limitation set by Law 160 by appealing to new procedures (i.e. a formal letter from Incoder, a permit from the municipality), and new legal categories under which this fragmentation is allowed. In a new attempt to solidify these divisions and dissolving others (relationships), the divided land owned now is not considered any more a rural parcel devoted to agriculture but rather has the status of rural housing, destined to provide shelter to a *campesino* family even though it is still used in agriculture.

In Maria la Baja, contrary to El Libano, the formalization of land ownership is still loosely followed.²¹⁷ *Campesinos* have worked and lived in the territory without previously defining its boundaries. For instance, unlike *campesinos* in El Libano that showed familiarity with maps of their parcel, in Santafe de Icoatea drawing maps and setting up the boundaries of their territory was a new experience (Figure 17.) This activity entails a different logic than that used by the community working the land

²¹⁷ What could be seen as a mere technicality is crucial to define the status of ownership in Santafe de Icoatea. In fact, most of the parcel owners interviewed had not completely achieved formal ownership of their land, they lack the Public Deed formalized before the Notary and instead they had the resolution of adjudication of the parcel issued by Incoder several years ago.

every day. Similar to the issuance of a public deed, drawing a map was an attempt to solidify their relationship with the territory in order to make sense, comprehend and analyze different changes that happened in their territory. This exercise not only sparked discussions among *campesinos* on where to place the boundaries but also introduced them to a different logic where they could reflect on different aspects of their relationship with the territory (Figure 17 and 18.)

Maps, as well as land legal documents, are aimed at achieving a level of cognitive closeness to reflect upon on a space where everyday life actions happen. Just as boundaries are set in legal documents or imaginary lines are drawn onto a map dividing the territory, such actions set people to perceive a different reality of their relationship with their surroundings, and at the same time presents them with a new set of problems.

Once such relationships are established and boundaries in the land are set, what until then remained as loosely defined patterns of ownership recognizing only the property of specific crops growing in different plots of land, or the energies one person had put in a specific area of the territory as the reason to directly benefit from it, vanishes. A formal view of the territory, as a piece of land or a plot, subjected to be owned is then introduced. Once such cognitive solidification is achieved by drawing the boundaries of the territory or demarcating the limits in a document, the pathway is set for further subdivision of the piece of land among an expanding number of potential owners.

Not seeing the land but seeing the division

The perceived disjuncture between the legally divided land achieved through papers and the completeness of the territory is also a matter of serious concern for staff officials. The review made by a project evaluator at the central office of Incoder in Bogota of plot's papers does not allow him to perceive the territory outside of the idea already made from reviewing the technical documentation: the public deed, maps and productive project to be implemented on the land (more on Chapter 2).

Evaluators often realize this after their visit to see some of the *campesinos* land project on the ground. Reviewing the documentation simply does not provide with the experience and knowledge required of the territory or how to work with it. In the words of Nelson Neva, an agrarian engineer at Incoder,

“They (*campesinos*) know a lot but in the field. When one is in the field, one realizes that they know a lot of things that one never learns at school, how to treat their crops properly, for instance. Things on paper may seem easy to do, but once you are there, if one does not have such knowledge, they are impossible to achieve. These people have that knowledge but unlike you, they cannot express it that well on paper as the application for the subsidy requires. One sees that Incoder, at the moment of assessing their projects, fails to take into account such knowledge on the ground.”²¹⁸

Furthermore, the current scandal for the misappropriation of public money by wealthy landowners as part of the program of Rural Income, Agro Ingreso Seguro, is useful to illustrate such perceived disjuncture.

²¹⁸ Interview, May 20, 2009.

The scandal revealed how some of the most prominent families were able to divide up the land they owned among several members of their family and thus were able to obtain more resources from the government to invest in their farms.²¹⁹ Despite public consternation with these events, especially with the idea of the big land owners appropriating most public money for rural agriculture at the same time the country had to face the situation of more than 3 million poor *campesinos* displaced by violence,²²⁰ nobody wondered about the inheritance problems with the technology of written documents that had allowed such disparities in the allocation of subsidies to occur in the first place.

Just like *campesinos*, these big landowners had a complete view of the territory, something that officials in Bogota could not see by reviewing the documentation required. The documents were not illegal or falsified copies. What these families did is in fact a recurrent practice among upper and upper-middle class families to fragment their properties. Such practices are also used in order to avoid paying higher property taxes or to avoid restrictions to unproductive land tenure in large farms.

Property fragmentation is a choice made available in the law. Once the formalization of land ownership is achieved and land is made into a thing, land can be subsequently subdivided into smaller parts, or into different entitlements that can be allocated among different persons.

According to Kennedy,

²¹⁹ These were families that are well known for having very strong political ties and influences at a regional and national level. Even drug lords and Paramilitaries benefited from the program. Politicians that attacked the government saw their own families benefited by the subsidies.

²²⁰ “Detectan cinco modalidades usadas por los grupos armados para quitarles tierras a *campesinos*”, Newspaper *El Tiempo*, November 12, 2008.

“the meaning and significance of entitlements is therefore intertwined with other elements of the legal order, perhaps most notably, rules structuring the entities which may be the holders of legal entitlements. Family law is probably the most striking example – may property be held by the ‘family,’ the ‘head of household,’ by each individual, by women or children, and if so, subject to what limitations in favor of the others?”²²¹

Additionally, when land is made individual, the piece of land or any of its entitlements can be owned by a person or a group. Persons and entitlements can multiply infinitely yet land as a thing remains as a finite entity making the issue of scarcity arise as a point of concern. The possibility given in the law of land ownership to infinitely divide the thing among a growing number of people or create different entitlements over the thing means that such division can only become infinite from inside, as in land fragmentation. The effects of such conceptions particularly affect the new people making claims to access those benefits that come with landownership. Therefore, the idea of allocation of finite resources lurks behind granting new land titles to those ownerless and stands out as a primary concern for both property scholars and environmentalists when thinking about the legalization of ownership.²²²

The solution to the perceived disjuncture... new regulation, more law, more papers, more complexity

New limitations are drafted in the laws to respond to the unproductive fragmentation that *campesinos* have advanced on their parcels. These restrictions are then

²²¹ Kennedy, “Some Caution about Property Rights,” 13.

²²² Carol Rose, “Invasions, innovation, environment” in 2010 in *Hernando de Soto and property in a market economy*, ed. Benjamin Barros (Farnham, Surrey: Ashgate Pub, 2010), 27.

incorporated into deeds and other legal documents. The legal history of granting land ownership to *campesinos* is rich with these examples. *Campesinos* find that after subdividing their land they are violating the law, they have divided up their property illegally and have sold without the state's authorization. Such experiences often increase discontent with the regulation as such restrictions are perceived as new hurdles affecting enjoyment of the land.²²³

In Colombia as early as 1961 Agrarian law prohibited the division of a parcel smaller than 5 hectares and gave the parcel the legal status of commonly owned and indivisible (Law 135 of 1961). Law 160 of 1994 that replaced law 135 created a new property regime over rural land to restrict selling. The category of UAF Unidad Agrícola Familiar (Agrarian Familiar Unit) was created in order to prevent them from selling the parcel to others in a matter of a few years, over parcels assigned to *campesinos*. The UAF, required consent of the family household and of the state (Incoder) in order for the parcel to be sold.

Law 160 also established a restriction of 10 years before UAFs could be sold to another person. Failure to comply with the regulation immediately reverted ownership of the parcel to the state. Full ownership was not granted until *campesinos* paid the attached credit loan used by the state to purchase the UAF. *Campesinos* later discovered these and other limitations with an incredible amount of surprise and, in many cases, creating new hardships in their attempt to become formal owners.

²²³ See for example Rocío Rubio, *Actores políticos frente al agro colombiano*, Cuadernos Tierra y Justicia No.8. (Bogotá: ILSA, 2002).

In words of Florentino Aparicio, a *campesino* from El Libano, that won a parcel when the main Hacienda was divided by Incora in the 80s, after a long legal dispute,

“We never stopped to think about that to what we signed onto. Neither I, nor my wife or children... Later we realized that it was not ownership over the land what we had, but it was a title of ownership to be paid for. You had to redeem the title by paying up the cost of the land. The complete deed will be issued after you pay out your debt.”²²⁴

This same informant, when describing the experience with the limitations found to divide up the UAF parcel after such subdivisions were done de facto, stated:

“We then realized that the land had the status of a UAF which meant that the land was the patrimony of the entire family and it did not only belong to the head of the family. The head could not sell the land without the approval of the entire family and Incoder. If we had known this before, the parcels would have remained complete. These incidents have torn families apart.”²²⁵

Campesinos that gained ownership expected their interaction with the state bureaucracies to end once they became owners but instead found that they had to deal with more papers and new procedures needed to be followed. In order to sell you need a written authorization from Incoder waiving the limitation on the UAF regime. They also know they need to attach an authenticated copy of the national id card of each of their family members to the pile of papers required for the sale. They also know that

²²⁴ Interview, December 19, 2009.

²²⁵ Ibid.

they must show proof of payment of the property tax bill issued by the municipality, as well as to bring the certificate of registration clear of all mortgages and other encumbrances on the land.

But just as *campesinos* learn this institutional behavior they also learn to identify the gaps left by the system (Chapter 3). *Campesinos* find themselves at the same time trying to comply with these limitations because of their interest to interact with institutions and have their actions recognized under the legal framework, and yet disobeying legal provisions when selling or dividing the parcel moved by more pragmatic reasons. When they cannot make their transactions valid before authorities and at state offices they choose not to deal with the state law until last instance and still make subdivisions or sells of land amongst themselves.

New regulations aimed at fixing such disjuncture... are also a concern for officials

The number of unattended procedures and neglected regulations that attempt to formalize the people's relationships with land have become the concern of public officials. Officials are overwhelmed with the amount of regulations and paperwork needed to formalize actions over the land. According to one official at the local mayor's office in Maria la Baja:

“We have limited resources. However the amount of obligations we have as head office in the municipality are enormous. The legal framework is vast. However, at the same time new obligations for the local government are created, resources to comply with such obligations are not made available. So the local government has to suffer the vicissitudes of not having the resources

available to provide them [*campesinos*] with good assistance”. She admits the contradictions between what the law dictates and the poor attention offered to *campesinos*, “the law is clear, we know that, and we do not excuse ourselves, it is simply that we know the reality. It is a fact that monetary resources, new technologies, administrative skills, these and other things, are all insufficient.”²²⁶

In the region of Montes de Maria, new agro businesses are taking over. Investors are trying to formalize land tenure relationships of *campesinos* in order to legally buy land from them. Some investors have bought the land from legal owners that are not in the territory anymore and immediately initiate evictions of *campesinos* lacking legal documentation. Some investors have purchased land and have influenced officials to quickly register the land title even though it is unclear whether the land was legally owned by *campesinos* or considered public.²²⁷

In these cases, problems caused by the use of the legal written technology to formalize land ownership has exacerbated the current state of uncertainty officials have when dealing with such cases. Luis Mercado, an official at one of Incoder local offices narrates the chaotic state of formal land ownership found in Maria la Baja for an important number of *campesinos* that have long occupied this territory seriously hit by violence during the last twenty years,

²²⁶ Interview, September 3, 2009.

²²⁷ See: “Gobierno toma medidas por negocios ilegales con tierras de desplazados”. *El Tiempo* Newspaper, September 11 2011, accessed September 30 of 2011, http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-10335188.html.

“There are several situations on the ground that are complicated. At the moment a *campesino* abandoned the parcel [because of violence] many other *campesinos* occupied those lands out of necessity. They now have 15 or 20 years living there, but then the *campesino* who has the legal title comes out with the title saying “this is mine”. That title must be worthless because others have made the improvements on the land. However, the one person who holds the title sells it to “the cachacos” [agro business entrepreneur usually coming from urban inner cities of the country]. The “cachaco” does not have any knowledge of the situation, but then he goes and says ok I will buy you the title, buys the title, and then kicks out the *campesinos* from their land.

In other cases *campesinos* do stay on the land, but what happens, that issuing a title to make them owners is dangerous because in 30 years things have changed. Things are not the same in the territory and the technical work must be done again. The land parcel needs to be measured again, it must be mapped out again, then you need to socialize the information and see if there are new changes to be made; you need to do all this again to be able to legalize [*campesinos*] and do things right.”²²⁸

The problem of the perceived disjuncture between the ideal use of the technology of formalization and the ‘reality’ on the ground not only enhances the conflict between parties contesting over landownership. As Luis Mercado states, it also aggravates an already difficult situation for vast territories in Montes de Maria where the legal status is still unclear. These indeterminacies have serious legal implications for *campesinos* living in the territory of which most still unaware. For instance, a *campesino* that was

²²⁸ Interview, August 8, 2009.

assigned a parcel of land by the State several years ago, received the title but failed to register it might still not be officially considered owner of the land. Thus, after certain period of time passed the legal ownership of the unregistered land reverted to the State and the land is consider public land owned by Incoder.

In Mercado's words,

“20 years ago the state issued the titles and provided *campesinos* with guidelines so that they could go and register them. So the *campesino* would go with the document, pay the registration fee and register the title. However, an important number of *campesinos* because of the lack of resources or because they kept them under their mattress said, ‘I will go do the paperwork some other day’, and never did it. So they never registered the title. What happened then? That land never passed legally to be owned by them. When Incora entered in liquidation in 2003 we found that many of the land adjudicated had not been registered. In Montes de Maria there were 25.000 hectares without legalization. So then Incoder [the new Incora] transferred some parcels to those that could verify, however, there are still many that are at Incoder without being legally transfer to *campesinos*. They are in limbo. I have no idea how the Department of Agriculture [the main governmental office to which Incoder answers] will work this out. It has been 2 or 3 years since they started trying to solve this situation and they have not been able to do it.”²²⁹

Cases like these portray the complicated legal situation *campesinos* find themselves in when dealing with the system of land formalization. It also shows the tremendous

²²⁹ Ibid.

confusion and anxiety experienced by staff officials when confronted with cases that are extremely difficult to solve.

Stamping the relationship- “ a clean start”: An appeal for an update in the technology

As explained in detail in chapter 2, one of the main causes why the central office at Incoder rejected *campesinos* projects was because of the problems with defining the boundaries of each of the parcels found in legal titles. Much in the form of a formal and traditional Spanish title, the Colombian public deed document still contains a written description of the boundaries of each plot of rural land. As some of the lawyers at Incoder pointed out it was difficult to establish limits in written description that incorporate objects which no longer existed or were difficult to find after a couple of years. Boundary lines found in deeds are literally established in descriptions such as: “from the old mango tree, the first boundary stone or passing by the shack house”.

As officials at the central office working with cadastral maps and real estate appraisals indicated during informal conversations, often the information collected on the limits of a plot are not the same in the different instruments used (public deed, cadastral maps, surveys). The information from the public deed can be different from that contained in a cadastral map (almost inexistent for some rural areas). At the same time, the information about the plot’s limits included in the deed can differ from that registered in the certificate of registration. Sometimes it is difficult to establish a clear succession of legal title as the annotations registered are unclear or they register different actions both, of possession and ownership. Some officials agreed that the recording of information in these instruments often lack of consistency.

The complex gap between maps of the territory and the multilayer of relationships that take place in and out these spaces is identified by James Scott. This complexity is also inherent in written legal documents that delineate space. In a city: “its complexity defies easy mapping. Any map [or written deed], moreover, would be spatially and temporally limited. The map [as the written deed] of a single neighborhood [or plot of land] would provide little guidance to the unique intricacies of the next neighborhood, and a description that was satisfactory today would be inadequate in a few years.”²³⁰

De Soto points out that there seems to be a constant appeal by governments to improve mapping technologies, when in his view, government efforts should be addressed to making the necessary legal arrangements to legalize capital.²³¹ What de Soto fails to see is that such legal arrangements are a similar attempt to stamp and solidify a relationship between people that creates land as a thing to be owned. As has been illustrated both fail to provide accounts of the multilayered relationships and the complex processes that take place in this territory. One cannot exclusively explain the problems with the system of property formalization in third world countries as consequence of the old-fashioned state of recording in which the legal regulation favors an static and passive elite contrary to the dynamic character of property systems in the west,²³² it is rather that the technology under which we create land as an asset never renders the whole picture of the territory, and thus privileges certain relationships over others.

²³⁰ Scott, *Seeing Like a State*, 188.

²³¹ De Soto, *The Mystery of Capital*, 183.

²³² Ibid., 90.

The analysis of the technology of land formalization makes visible a set of relationships that are not necessarily mediated by the creation of wealth, or by land understood as an economic asset. Furthermore, it reveals how the process of capital creation still presents some internal contradictions, unattained processes and unintended effects or consequences from within.²³³

The legal history of rural reforms in a third world country like Colombia is full of examples that attempt to update the legal technology that formalizes property. In words of an official at Incoder the new regulation drafted will provide “a clean start”. “To have a clean start” is a phrase often heard amongst official and policy makers working with land formalization and seems to convey a shared belief that by updating the information collected and the legal regulation used, the problems with the experienced disjuncture will cease to exist. Much like de Soto, officials believe that from the moment ownership of unsettled or legally disputed land is mapped out and legally defined, progress and wealth will spread around.

In the case of Colombia this move towards achieving a state of clarity, a “clean start” as is often referred to, has been attempted several times. Since Law 200 of 1936, the first rural reform, efforts were advanced to legalize old colonial titles granted by the Spanish crown and all questionable titles issued 20 years before were declared legal. From that point on similar regulations periodically followed trying to legalize title for some unclear land parcels.

Regulation such as Law 135 of 1961 and Law 88 of 1986 incorporated similar provision that aimed at clarifying dubious titles by allowing people to claim legal

²³³ Riles, *Collateral Knowledge*.

ownership of land and validating unclear titles after a certain period of time. Finally, Law 1152 of 2001, recently overturned by the Constitutional Court, included a legal provision that aimed at legalizing land acquired 20 years before the issuing of the law. As in the past, such article aroused a wide array of criticisms because such legal provision could be used to legalize vast territories violently occupied by paramilitary groups during the past two decades; paramilitaries had managed to obtain legal papers of the stolen land.²³⁴

In order to solve the problems that exist with the instability of the system of land formalization new attempts to organize and formalize transactions are crafted with new laws and regulations. Yet by privileging such technologies that make land a thing in the legal world new instabilities appear and, as some of these cases illustrate, the use of such technology ends up being infinitely more useful to the powerful.²³⁵

Nonetheless, in Colombia the appeal for a re-engineering of the system of land ownership and the registration of each transaction is still endorsed by all in the process of land formalization. The use of this technology awakes the hopes of so many, powerful or not, to finally achieve a state of welfare and alleviate the problems of the marginal and excluded. One cannot help but ask, how this is possible if, when, looking at legal recordings of transactions over individual plots in el Socorro or Montes de Maria it is difficult understand how the belief in the recorded technology still has such an important role when it misses so much about the richness of these territories. Moreover, when looking at these legal documents, one often finds these papers are

²³⁴ See: Hector Mondragon, "Estatuto rural siete veces infame" in *Revista Semillas* No.30/31 (Bogotá: Semillas, 2007); Sergio Coronado, "Réquiem por el campo: Reflexiones alrededor del Estatuto de Desarrollo Rural 2007" in *Revista Cien Dias* Numero 61 (Bogotá: Cinep, Agosto 2007).

²³⁵ Silbey, "After Legal Consciousness," 360.

anything but clear in establishing flawless lines of ownership back to the original owner. By looking at these documents over and over again, one is reminded of what Joseph Singer has called the “tainted origins of property.”²³⁶ In other words, these documents allow us to remember that the solidification of this relationship by which land ownership is created is at most, arbitrary and that in such process a great deal of violence and injustice is often involved.

A clean start: Post note

In March of 2011 the chief supervisor of Registration and Notaries in Colombia announced that 150.000 hectares of land were fraudulently recorded in Public Deeds from an overall reviewed of 10 % of the documents at the notary offices. The chief supervisor explained how Paramilitaries had recorded and registered fake documents at different notaries in the regions where they had control. With the support of corrupt functionaries from notaries, offices of registration, staff at local mayor offices and at Incoder, public deeds were issued for land occupied illegally; fake witnesses were presented before notaries, registration certificates were adulterated, public land was illegally assigned to paramilitary straw men, and private land belonging to some displaced *campesinos* was fraudulently recorded to these new owners.²³⁷

In fact, in places located in conflict areas like Maria la Baja, where the local mayor's office has been involved in several scandals of corruption during the past 3

²³⁶ Singer, “Original Acquisition of Property,” 766.

²³⁷ “Acusan a cinco notarios por venta irregular de predios en Montes de María”, *El Espectador Newspaper*, April 11, 2012, accessed April 12, 2012, <http://www.elespectador.com/noticias/judicial/articulo-337656-acusan-cinco-notarios-venta-irregular-de-predios-montes-de-maria>.

administrations²³⁸, original written records were consumed by fire. As one of the officials of the current administration of Maria la Baja commented to me during her interview “When we received the mayor’s office in 2008 it was very disorganized. In fact we did not receive the office... In here they had set up a fire with documents in it. I don’t know which documents, may be documents revealing some financial transactions... the two main TV channels came here and the episode was broadcasted nationally.”²³⁹

Once again, the solution provided by the chief supervisor and the Colombia State Department to the chaotic situation found in these areas with legal documents was to propose a new law. The new bill (Estatuto Anti-Corrupcion or Anti-Corruption bill) seeks to update the system of issuance of legal titles and recording of transactions over land. It proposes a close monitoring of the activities at local notaries. It provides notary’s official with job relocation alternatives in order to avoid pressure committed by private individuals to fraudulently record transactions. Additionally, the bill aims at preventing new leaks in the system by centralizing land title information in regional circuits rather than maintaining the information stored at local offices. Furthermore, under this new law notaries will be professionalized and the general prosecutor will have especial powers to press charges against corrupt notaries.²⁴⁰

The risk to counterfeit the instrument that grants legal ownership represents a constant threat to the technology that solidifies this relationship with land. New laws are set

²³⁸ Two administrations ago the mayor was convicted for contract criminal liability. Then, the past mayor was linked with paramilitary groups and left the position when the “parapolitica” scandal started and now the current mayor is under investigation for similar links with paramilitary forces.

²³⁹ Interview, September 24, 2009.

²⁴⁰ “Desenfundando la espada”, *Revista Semana*, March 12, 2011, accessed June 12, 2011, <http://www.semana.com/noticias-nacion/desenfundando-espada/153174.aspx>.

into place in order to maintain the belief in the technology that formalizes ownership. At the same time, new regulations are crafted in order to prevent the breach of this technology by dishonest staff, lawyers, notaries, local politician or private individuals.

The regulation regarding land ownership is then not only intended to achieve a state of clarity or “clean start” by clearly mapping out the plot and the owner of the land in question, or its modes of physical or legal division into entitlements, but also it aims at achieving a state of certainty and clarity regarding the behavior, intentions, activities or motives of the people creating or using such technology.

Conclusion:

In this chapter I have tried to make a reading of the technology of the seal document that creates land ownership as it is found in different rural setting in Colombia, and more concretely in the two rural field sites of my ethnographic work. To the question about whether such analysis is of particular use to Colombia, or its relevance outside this context, my tentative answer is that this analysis does not pertain exclusively to the problems of land ownership in Colombia (despite the local descriptions that support the argument) or of the situation seen in countries with a colonial past where such technology was long introduced. In fact, if some of the claims in this chapter lack of consistency are in part due to its ahistorical analysis. However, my aim to review the very notions and ideas associated when thinking about land ownership by taking seriously the analysis of the instrument that has allowed such conceptions.

What is relevant for Colombia in this study is that the issue of land ownership is still crucial in discussions for thinking of new alternatives on how to overcome the

political conflict that has and still triggers much of the violence seen in the country. In Colombia the question about land still central to the debate over the legitimacy of the State and in this context the struggle for land frequently arises as an unresolved mater.²⁴¹

In Colombia a rich amount of literature²⁴² has shown how the struggle to become landowner has influenced the expansion and growth of the country. Migrations happened within and out of the colonization frontier demarcated by claims to legally own the land.²⁴³ Numberless battles between *campesinos* and landowners in and out of these frontiers of expansion have characterized the history of the conflict²⁴⁴. In such

²⁴¹ Even if it is commonly accepted that land disputes represent an incredible source of conflict from our colonial past to these days, more work is needed to prove how such dynamics among different actors have played in each territory as the conflict is differentiated in each region of the country. Conversation with Absalón Machado, Bogotá, February 10, 2008.

²⁴² In the narrative of conflicts of land in Colombia, we see how the struggle between land owners and *campesinos* have repeated over time, always reproducing the social struggle over the ownership of land, as the most decisive rural resource, is part of bigger dispute in terms of benefits of the economic growth. See the foundational text of Catherine LeGrand, *Colonización y protesta campesina en Colombia 1850-1950* (Bogotá, Colombia: Centro Editorial, Universidad Nacional de Colombia, 1988), 18.

The dynamic of expansion of *campesinos* to territories where there were not clearly established property rights have marked the dynamic of expansion and growth of Colombia. The colonization frontier was established once property rights were clearly established. What have defined the frontier is clearly established property rights over land. The recognition of indigenous territories or the foundation of villages upon Cédulas de Mercedes, where groups of Indians, blacks and mestizos were included in the territories as slaves or workers of haciendas marked the dynamic of colonization and expansion in the country. Slaves migrated to territories where there not clearly established property rights over the land. See Fals-Borda, *Historia doble de la costa*. *Campesinos* colonos moved to territories outside the frontier clearly established property rights to exploit the land and to later claim their ownership through the process of adverse position. See Molano, *Selva adentro*.

²⁴³ Reyes, *Guerreros y campesinos*, 21.

²⁴⁴ Also disputes among *campesinos* without titles in rural frontiers and *terratenientes* trying to consolidate large ownership over land have taken different shapes and forms over decades inside the frontier, in regions such as Valle del Cauca or Santander. See for example Michael Taussig, "The Genesis of Capitalism amongst a South American Peasantry: Devil's Labor and the Baptism of Money" *Comparative Studies in Society and History* 19 no. 2 (1977): 130-155.

Disputes over land ownership sparked into new conflicts giving birth to the emergence of guerrilla groups in 60s, drug lords in the 80's, and paramilitaries in the 90. See Reyes, *Guerreros y campesinos*; also Mauricio Romero, *Paramilitares y autodefensas, 1982-2003* (Bogotá: Temas de Hoy, 2003).

Laws created to regulate land disputes such as Law 200 of 1935 and Law 135 of 1961, have sometime achieved certain success when *campesinos* have been able to gain ownership, as in the case of the Asociación Nacional de Usuarios *Campesinos*. See for example: Elsy Marulanda Alvarez, *Colonización y Conflicto : Las Lecciones Del Sumapaz* (Bogotá, Colombia : UN, Instituto de Estudios Políticos y

disputes actors such as, the State, NGOs or grassroots organizations intervene, mediate or defend the interest of one or the other group contesting for ownership of land.²⁴⁵

In these academic works the commitment of the State to alleviate such disputes is questioned,²⁴⁶ the motives and political orientation of different actors in the history of the conflict are examined, and the great amount of procedural hurdles found to formalize land transactions are subject to bitter criticism. A common trend in this extensive literature is that it attempts to explain land disputes that trigger violence as a consequence of different economic, political and social elements that have influenced the way actors use the law to come out ahead in the struggle over land. Under this view the role of law, and in particular laws pertaining to land ownership, is often seen as a tool used by those with the legal means to obtain favorable outcomes.

Relaciones Internacionales : Tercer Mundo Editores, 1991). However, most of the outcomes in such disputes have favored the concentration of ownership by large landowners.

Today we found the resurgence of *campesinos* demands for land in the laws targeting Internally displaced *campesinos*, minority groups such as indigenous people, afro-colombians, and projects on transitional justice that qualify and protect victims of the political conflict.

²⁴⁵ Law and Society insights on why they have come out ahead using the legal remedies are not very different from what socio-legal scholars in Colombia have demonstrated for generations about the role of law in the country regarding land. They have written extensively on the critical situation facing rural areas. For the above authors the Colombian civil and agrarian laws that define the state of ownership, as well as the administrative law by which the State regulates the process for granting land titles to rural communities are problematic. These laws pertaining to land ownership favor the local elite who have the political, economic and legal means to manipulate the legal system, thus have left rural farmers (*campesinos*) in a precarious situation. See for example Marulanda, *Colonización y Conflicto*. These authors argue that such laws have maintained a state of labor-economic relations in rural areas that essentially ignores the socio-political ethos that tie *campesinos* to their land and limits them to the realm of minimum wage workers on land owned by wealthy private owners (*terratenientes*). See for example: Rubio, *Actores políticos frente al agro colombiano*; Dario Fajardo, *Tierra, poder político y reforma agraria y rural*, Cuadernos Tierra y Justicia. No 1. (Bogota. Ed. ILSA. 2002.) With very few exceptions they have overlooked the role of law and in particular of the technicality of land ownership, such as the public deed, in defining the state of the conflict of land. For a similar critique see Helena Alviar., “Redistributing Land in Latin America: Caught between Economic Development and Positivism” in *Seminar in Latin America on Constitutional and Political Theory (SELA)*: Yale Law School, 2008.

²⁴⁶ Boaventura de Sousa Santos, *Estado, derecho y luchas sociales* (Bogota, Colombia: ILSA, 1991).

Recently, the role of law in shaping the political, economic and social structures where land disputes take place has been taken more seriously by a group of legal critical scholars in the country.²⁴⁷ These perspectives on law seek to critically assess some of the assumptions that govern the analysis of law traditionally found in legal formalism, still dominant in the country. Their analysis of law, however, glosses over some of the most mundane instruments that allow for law to operate and instead build up their theoretical approach from already preconceived notions of society, social movements or identity; the relationship of individuals with law is characterized into some ideal modes of behavior to undertake such analysis,²⁴⁸ and in general their work lacks sufficient empirical and ground data to account for multilayered and complex interaction of individuals with the law.

Overall, these critical perspectives of law in Colombia (and Latin America), end up framing the experience “of the other” into conceptual frameworks such as Legal Pluralism or the instrumental inefficacy of law²⁴⁹ where “the other” is measure against an institutional logic buttressed by the idea of the nation-state, either by re-creating a parallel system of norms and procedures outside the State, emphasizing the appeal to use law by the State in order to compensate the lack of legitimacy and political efficacy, or illustrating how state’s laws gets recognized or resisted by different social and communal practices.²⁵⁰ Most of the time these legal scholars, in some way or another, aim at including “this other” into the institutional *rationale* found in the law.

²⁴⁷ Perhaps the most ambitious socio legal project has been outlined by Mauricio García-Villegas, and César A. Rodríguez Garavito, *Derecho y sociedad en América Latina: un debate sobre los estudios jurídicos críticos* (Bogotá: Instituto Latinoamericano de Servicios Legales Alternativos, 2003).

²⁴⁸ See for example: Mauricio García-Villegas, *Normas de papel: la cultura del incumplimiento de reglas* (Bogotá: Siglo de Hombres, 2009).

²⁴⁹ See Mauricio García Villegas, *La eficacia simbólica del derecho: examen de situaciones colombianas*. (Bogotá: Ediciones Uniandes, 1993).

²⁵⁰ Cesar Rodriguez, *Más allá del desplazamiento políticas, derechos y superación del desplazamiento forzado en Colombia* (Bogotá D.C., Colombia: Universidad de los Andes, 2010).

However, I contest that in using these frameworks some of the richness and subtleties in how different people “see” or relate to law and its material objects, that equally mold our conception of what law is, are overlooked.

Furthermore, it not coincidence that these scholars actively advocate for new legal reforms to obtain, repair, redistribute rights to these people often considered marginal. In the context of land their boldest initiatives advocating to give land back to those disposed *campesinos* are recurrent in using the same legal technologies of the past.²⁵¹ Consequently, they advocate for the implementation of institutional devices, such as the deed, in order to formalize land ownership but miss a lot of what happens on the ground (the same with other legal documents such as “the “fallo”” in Chapter 3). In the rural context where the institutional presence of the state is loosely perceived and its policing power is weak or manipulated, the present struggle to formalize relationships over land is an effort to bring institutionality into these settings.²⁵² The deed as the technology to formalize land ownership represents such a commitment to endorse institutionality.

As above mentioned, I believe such technologies that like the title or Public Deed allow us to talk about property over land as a thing have been taken for granted in these analysis. This has led to overlook the multilayered responses and uses of such legal tools. The blind and unquestioned faith in the technology that formalizes land as a thing, that allows creating land ownership, and the use of other legal techniques to solidify relationships have been often forgotten or neglected in the analysis of land disputes when in fact some of the problems experienced in such controversies over

²⁵¹ Rodriguez, “Solidarity Economics, Globalization and the Struggle for Social Inclusion” in *Another Production is Possible*, Santos (ed).

²⁵² García-Villegas, *Normas de papel*, 276.

land stem from how we make land an asset, a thing or finite entity. The analysis of these legal technologies not as mediums but as what is foregrounded reveals numerous blind spots and gaps open in the use of such legal tools that are worth taking into account.

On the debate over land ownership in Colombia to which one easily is subject to take sides, it is necessary to tell a different story; one that escapes the political and economic broad generalization that have stagnated the debate and is currently lacking of new ideas.

Moreover, by looking at this technology of the Deed the story of disputes over land not always places each actor in contention for land at opposite ends. As such, the technology of the sealed paper that molded our conception of land property and its uses triggers both different and similar reactions, reproductions, and problems for *campesinos*, NGOs staff, intellectuals and public officials alike. These kinds of problems are often missed or ignored when thinking about the land formalization in socio political analysis.

To bring attention to the underlying assumptions and shortcoming in the use of such technology in Colombia does not seek to destabilize or abolish ownership all at once.

²⁵³ It is on the contrary, to generate a reflexive move towards the appeal such a

²⁵³ The critical analysis of how the technology of the seal document establishes landownership does not seek to dismantle property but rather to uncover some of the hidden effects in this process of reification of a relationship between persons. The case of Colombian reveals that property is also dependent on how effective the institutional arrangements and rule of law are in a particular context. Property is utterly part of and dependent on the broader legal culture. When the legal culture is weak, "property" in the way we understand it is correspondingly weakened. Joseph Singer has addressed the importance of culture in our own understanding of property: "In analyzing property rights, we often adopt unconscious presuppositions about who owns the particular entitlement we are discussing. Such presuppositions tend to come from conventional understandings of ownership. Those understanding have their origins in

technology has and why it remains to be overlooked. In the context of land ownership it is to call attention to how these institutional devices sometimes formalize and sometime fail to formalize the way *campesinos*, bureaucrats and other people involved in the process see land, and law broadly speaking. If, as it has been proposed from both left and right academic streams regarding landownership, everyone agrees to strengthen such institutional mechanisms with the idea that they will allow a more inclusive society, this call is an invitation to reflect on the possibilities of achieving such endeavor through these institutional devices and to inspire further inquiries into what is lost by the use of such devices.

To rethink the problems of land ownership from the perspective of the technologies that allows for such constructions is not only to provide a different version of legal disputes over land, but also to raise attention to what is often lost, silenced or ignored in the use of such technologies. It is to understand the technology of the sealed document and its shortcomings that are often the source of disappointments, disagreements, distrust, or a loss of faith either in the law, the state's authority or its institutions, experiences by some many of the actors involved. It is to ask the question how do we imagine and best build such institutional commitments to law in a country like Colombia, marked by extreme disparities and violence in order work towards a more inclusive society.

Finally, in the global arena it is not only important to look at how new technologies destabilizes the previous conceptions over persons and things, but also it is important to critically review those ancient mechanisms, those old colonial technologies, that

culture, history, and law. The importance of the cultural underpinnings of property cannot be overstated." Singer, *Entitlement*, 10.

allowed for such constructions in the first place. To critically examine the technology that allowed land to become a thing is to critically review one of the pillars of capitalism, that which allowed land to become an asset that could be circulated and exchanged. It is to unravel one important “piston” in the engine of capital and push towards the new inquiries on how to building different conceptual framework where the relationships with others human and no human can be better understood.

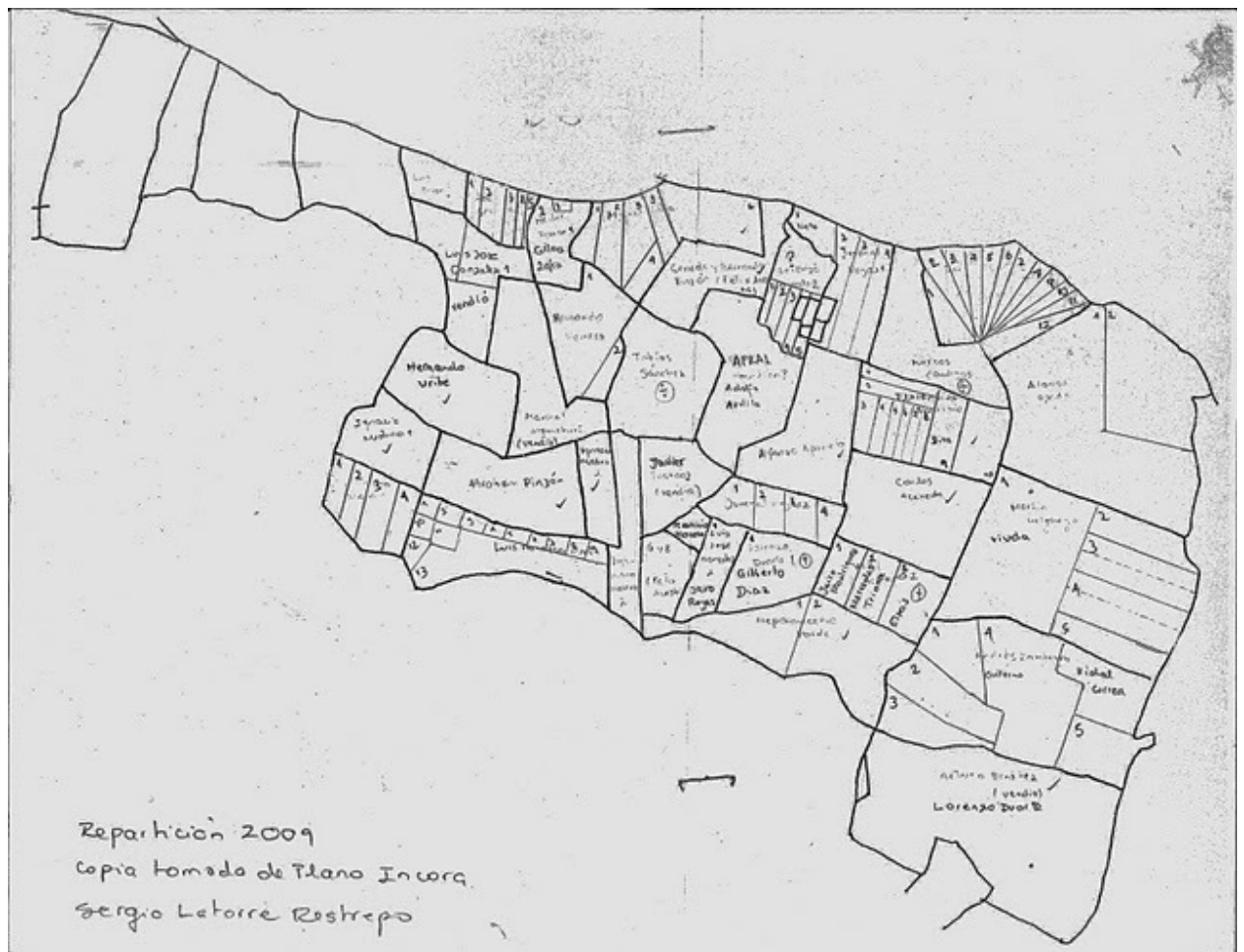


Figure 16. Map of Rural District of Libano, Socorro (Santander): Example of Land Fragmentation



Figure 17. Pictures Mapping the Territory in Santafe de Icotea, Montes de Maria (Bolivar)



Figure 18. Map of the territory before the internal displacement of the community of Asosantafe, Montes de Maria (Bolivar)

CHAPTER 6

CONCLUSIONS

The last chapter advanced some of the conclusions in working the technology that formalizes land ownership in the context of Colombia agrarian policy, and its effects on different actors, from *campesinos*, to NGO officials, public functionaries, academics and legislators. Certainly the main contribution of this dissertation to the role law plays in solving land disputes is the analysis of the technology that formalizes ownership in the form of the sealed document, which solidifies a particular relationship between individuals in which land is individualized as a thing to be owned.

The engagement with the core document of landownership, the public deed, reveals how landownership is created in a particular act taking place at the notary where the transaction is formalized by the issuance the sealed document. But it also shows how this technology shapes our current understanding of ownership in legal theory and how some of the problems of formalizing live actions and transactions are inherent to the use of technical devices. It reveals these shortcomings in the context of legal regulation pertaining to land ownership and rural reform in Colombia, in which multiple players equally take for granted this legal technological device, most importantly the sealed document.

Part of problem, why there is a constant dissatisfaction with the law pertaining to land disputes steams from our understanding of land ownership through the technical device of the sealed document. Furthermore, this dissatisfaction with law is played out

in the constant appeal and reproduction for new legal technical devices trying to come up with new alternatives to capture, reorganize and solidify new relationships from those previously constituted, but that fail to successfully achieve completeness.

In the same way, this experienced dissatisfaction with law, what in Socio legal scholarship has been characterized as the divide between Law on books versus law in action, is also a product of the way we think of law – thinking of law in two different realms, one as what law *is* versus what law *does*. The analysis of technical devices, and in particular the technology of the sealed document make no distinction between what law *is* and *does* as two separate domains. It mixes up both realms and thus makes the distinction disappear. Such diction vanishes from the analysis as the emphasis in the technology aims at exploring how such technical devices shapes our understanding of what we assert to be real (including the persistent dissatisfaction with law that such dichotomy portraits.)

The seal as analytical tool of the dissertation

I want to explain the role of the seal in the construction of the dissertation as a whole because it was through working through the seal that the argument was developed.

My identification and understanding of this technological device of the sealed document is the most simple but powerful insight of this dissertation.²⁵⁴ Through the realization of the seal as a visual representation but most importantly as an agent that

²⁵⁴ As Marilyn Strathern suggests “Scientist buttress their new claims by connecting them as much as possible to the body of previous scientific literature” Marilyn Strathern, “Who owns academic knowledge?” in *Commons and borderlands: working papers on interdisciplinarity, accountability and the flow of knowledge* (Wantage: Sean Kingston Pub, 2004), 59.

shapes our knowledge of what land ownership is, I was able to put the data together. It was the discovery of the seal in the land title document that allowed me to draw connections between the different materials presented in each chapter. The seal became an analytical tool that allowed me to connect and organize disperse notes, thoughts, readings and interviews collected while following the circulation of these documents about land and people (ID documents, letters of displacement, the act of incorporation of the legal association, the land title) in their different trajectories. Tracing the connections between different legal documents, as technologies that allow for the solidification of particular relationships and yet stimulating other interactions, I was able to assemble the arguments presented in each chapter.

Each chapter explores these different trajectories. The chapters develop particular ways of looking different textual documents contained in the Incoder folder (Chapter 1.)²⁵⁵ Each engages with a different discussion related to the problem of land disputes by engaging with the documents that are contained in the Incoder folder. The chapters present how particular legal documents create different kinds of subjectivities and expertise; how such technologies circulate, incorporate and transform into other technological devices and how they shape the view and actions of people working with them. Following the circulation of these documents also uncovers a different set of relationships in rural settings that departs from the more standard vision of rurality and *campesinos*. The dissertation presents these actors and interactions in unfamiliar contexts, showing the complicated and multiple uses and responses to the legal technologies that are involved in accessing land ownership.

²⁵⁵ The act of opening the folder, and describing what I saw in the seal document of the public deed was what allowed me to shape the central argument about landownership and organize the rest of the dissertation.

The dissertation has been built through juxtaposing layers upon layers of textual documents, in the style of the Incoder folder. I hope the act of juxtaposing documents allows for the similarities, overlaps and connections between different descriptions in chapters of the dissertation to happen. For example, the close application of the TORs by bureaucrats at Incoder connects to the notary refusing to see ownership outside the paper. Or the evaluation room where land subsidy projects are uploaded into the database is similar to the chamber inside the notary where deeds are made. Also the green folder for the land subsidy is similar to the title folders at the notary.

More importantly, the juxtaposition aims at describing the land disputes in Colombia in a way that challenges the effect of closed-ness that is experienced by the Management Officer at Incoder when dealing with one of the subsidy project's folders. Unlike the subsidy folder, this is not a naive engagement with the technology of a folder, or the illusion of closeness contained in a folder. On the contrary, this work hopes to reveal the complexities and rich level of detail that the perspective of legal technicalities can bring, as well as to illustrate the problems that are filtered out as technological devices become embedded in the way that we solve legal problems.

In the remaining of the conclusion I would like generate some personal reflections as to how the making of this technology of the dissertation as a folder style happened and what are the implications of such endeavor in the production of academic work.

The making of the folder technology in the dissertation

The process of putting together each of the chapters of the dissertation happened backwards. My descriptions and fieldwork reports went in very different directions

trying to do justice to my fieldwork experiences. Initially, upon my return I found myself quick disregarding the knowledge draw from conferences, talks and books as they were only copies of a real experience others have had, knew or had written about. These versions of a story, that as a pre-fieldwork student I had taken for granted, were upon my return a tremendous source of dissatisfaction and discontent. I often thought what I witnessed in the field was different, or felt constrained to think in ways that felt so out of touch with my fieldwork experience.

In the fieldwork I was confronted with events of pain and human suffering which I have chosen intentionally to leave out from the dissertation. Neither the ethnographer's role nor the lawyer activist's role I have been trained at for years, provided me with any framework on how to tackle these difficult situations. At those moments I was left with nothing to say or suggest.

Upon my return, my work in writing fieldwork reports consisted in trying to make explicit some of these experiences where I felt the theory I had learned missed some of the rich details and complexities. However, to add to my frustration I did not have a structure or a theory to present. It was until I found a particular way of engaging the central topic of land ownership disputes through the technology of the sealed document that I could articulate the many accounts and reports I had written about.

Working backwards I realized the place where I first encounter the seal was in Incoder's folder, the first ethnographic site of my fieldwork. In the land subsidy folder at Incoder and the green folder at the office of the notary, the land's public deed was a document of great importance. The further I organized and rearranged the different arguments presented along the dissertation relating to different documents found in the

land subsidy folder, I became more confident that ultimately I was following the organizational structure given by the first artifact I encounter in my fieldwork: that is the folder.

A small anecdote will provide further explanation of the meaning of the dissertation-folder as a technical device. The contact with this folder marked my entrance to the fieldwork, as I daily saw the movement of folders around Incoder offices where officials were deciding on the future of thousands of land subsidies applications. At that point, my view of the folder was that it was one amongst many other tools officials work with.

One day in one of the *campesino*'s parcels of el Socorro, close to finishing my fieldwork, I came across copies of documents contained in one of these folders. A *campesino* leader that, in representation of a landless group of *campesinos* in the region, had applied to the subsidy to Incoder provided me with the stack of documents trying to find out why the project had not passed the evaluation. The excitement at encountering an Incoder folder in this setting was a completely different reaction than that which I had had months before at the central office at Incoder in Bogotá.

Unlike my first encounter when I handled some of these folders and saw officials move them around the office, this time I knew or had interviewed the person behind each of the signature from Incoder staff. I recognized the database style form of the letter issued to this group, some of the ID copies of the applicants looked familiar. I knew the part of the terms of reference that were outlined as the missing requirements this group had not fulfilled. I knew well both the area where the parcel of land was and also the Management office at Incoder where the decision to reject the application had

been made. I knew the notary where the land title of the potential parcel was issued and had directly spoken with the notary a couple of months ago. A great number of the experiences, the people, the territory, the offices, the regulation, the technological devices were now familiar to me, and were now organized in these stack of papers. In a word, I could see both the inside of the folder and its outside that connected into all the activities of my year and a half fieldwork.

Translating the folder to the dissertation: the activity of the intellectual

By treating or making each chapter as a document arranged in a folder like style I am also aware of the process of transformation typical of intellectual effort in producing written accounts. The project tries to achieve a sense of cognitive closeness by producing an ethnographic account of land disputes. In its making it reifies a particular reality through textual accounts in order to trying to make cognitive sense of the complexity that goes on.²⁵⁶ This awareness in the production of texts in academic settings has been discussed in ethnographical accounts. They self-reflexively analyze the role of intellectuals in the production of new texts and at the same time highlight how in the production of such documents the experience of what being an intellectual is forged.²⁵⁷

This view of the dissertation as a technical device in itself, as a folder-like technology, follows this self- awareness of the highly unstable character of our own constructions as experts. Both, the sense of closeness and open-endedness with which I have treated

²⁵⁶ Latour, *We Have Never been Modern*.

²⁵⁷ Similarly Law argues that "If you took away my computer, my colleagues, my office, my books, my desk, my telephone I wouldn't be a sociologist writing papers, delivering lectures, and producing "knowledge". I'd be something quite other -- and the same is true for all of us." Law, "Notes on the Theory of Actor Network," 4.

the technical devices described in land disputes apply also to this project. In the dissertation, at one time the technical device (databases, folder or ids or other legal documents, the royal seal in the deed) are aimed at achieving a sense of closeness, stability and security for new interactions to take place, and at a second moment, the analysis of every legal technological device makes realize the glitches, gaps or inconsistencies found in these technologies. For example, the evaluator that has to play with the database to pass the subsidy project, or when *campesinos* include different members of their family in the NGOs benefit programs, or when the system of recording fails to provide accurate information of the land and ownership at any given time.

The dissertation project as a technology itself allows me to reflect upon the richness of details and experiences that have been intentionally leave out or missed in providing this account – as the experience is flattened out into texts. The gaps in translation from my own native language into English, the great number of recorded material I did not used, the manifestations of joy, courage, generosity and pain I witnessed and have no words to describe. The cases of violence, sickness, hunger or extreme poverty seen in some of these communities and that I have chosen not to tell, these are all left out of the project but not out the writer's lessons about life that come with ethnographical work, with the privilege of being there.

Therefore, this dissertation as a folder-like technology has been the product of my own creation as an academic text. At the same it is through the contact with these materials, with the instruments used in producing this technology how I have also become transformed as an academic.

The transformation achieved by the making of a technological device

Out of my initial frustration when I came back from fieldwork and acted in disbelief of how knowledge is produced in academic locations and how it is built on specific settings, by acts of replication, produced in certain spaces, reproducing certain activities, models of communication, locations (classrooms, libraries), computers, books and more texts. The working through this dissertation has provided me with a new appreciation for these technical devices and with an agenda for an academic career. It has made me aware as to how such devices shape our own practices, understandings and beliefs as intellectuals.

Places such as notary offices are not that different from academic settings. Like the notary where parties go to formalize life actions in front of the authority that attest such relationship with the issuance of the title and the stamping of the seal, is not coincidence that we also go to universities to obtain a title, a stamp that validates, in front of others the relationship of having acquired knowledge (through partaking in these academic settings and producing new texts).

By the same token, just as owning land is created by the solidification of a particular relationship in front of the notary, owning, acquiring, producing new knowledge has also a relational quality, that is solidifying (making appear) by using technical devices such as texts, forms of speech, concepts or mental categories, among others. The value of such technical devices, both for knowledge and land, is that they make such objects appear and facilitates ownership of them to be claimed. As Strathern asserts for intellectual ownership “it puts the form of identity (an academic might claim) in relation to his or her work into a field of identities, a network of social actors with

their overlapping claims on the owner. When the owner is declared, their relationships with all those who have supported them can also be declared.”²⁵⁸

Ultimately, by producing this dissertation in which I describe the processes by which legal technologies shape the debate of land ownership I have provided an identity to the arguments and ideas advanced in this dissertation text. I have placed these ideas in a network of social actors where new engagements and exchanges can take place. Just as the parties become formal owners with the issuance of the public deed at the notary, with the production of this text I claim ownership over these ideas and arguments in front of others that validate such relationship. In doing so I also gain a new identity. It is my identity as academic, in the multiplicity of connections and relationships that such identity entails, what appears anew through the making of this dissertation.

²⁵⁸ Strathern, “Who owns academic knowledge?,” 64.

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Law 1152 of 2007, Law 1448 of 2011.

Assigned responsibilities to Incoder and other institutions involved in the process of granting land to rural communities:

Decree 960 of 1970, Decree 1300 of 2003, Decree 2000 of 2009

Special regulation pertaining to Internally Displaced Persons:

Law 387 de 1997 and Decree 250 de 2005

Regulated the Assured Rural Income program

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